

BLUE RIBBON COMMISSION ON AMERICA'S  
NUCLEAR FUTURE

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MEETING

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WEDNESDAY,  
FEBRUARY 2, 2011

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The Commission convened at 8:30  
a.m. in Salons A, B and C at the Marriott  
Metro Center, 775 Twelfth Street, NW,  
Washington, DC, Brent Scowcroft and Lee  
Hamilton, Co-Chairs, presiding.

MEMBERS PRESENT:

LEE HAMILTON, Chair (via telephone)  
BRENT SCOWCROFT, Chair  
MARK H. AYERS  
VICKY A. BAILEY  
ALBERT CARNESALE

PETE V. DOMENICI  
SUSAN EISENHOWER  
ALLISON MACFARLANE  
RICHARD MESERVE  
PER PETERSON  
PHIL SHARP

ALSO PRESENT:

TIM FRAZIER, Designated Federal Official  
KEVIN COOK, former clerk with the US  
House of Representatives  
MICHAEL HERTZ, US Department of Justice  
JOE HEZIR, EOP Group

ELGIE HOLSTEIN, Environmental Defense  
Fund  
MIKE TELSON, General Atomics

PUBLIC COMMENTERS:

ROBERT ASHWORTH

STEVE FRISHMAN

KATHERINE FUCHS

JOHN GERVERS

BRIAN O'CONNELL

MORGAN PINNELL

JUDY TREICHEL

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Senior Director for Strategic Planning, Environmental Defense Fund; former DOE Chief of Staff; former Associate Director of Natural Resources, Energy and Science, OMB	
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1 P-R-O-C-E-E-D-I-N-G-S

2 8:33 a.m.

3 MR. FRAZIER: In the interest of  
4 time and staying on some reasonable  
5 schedule, we are going to go ahead and get  
6 started. I would like to welcome you all to  
7 this open meeting of the Blue Ribbon  
8 Commission on America's Nuclear Future.

9 I hope that you all are ready for  
10 a good session with this panel. It should be  
11 very interesting. I hope you have all had a  
12 good morning so far, and with that, the  
13 Commissioners will be filtering in as they  
14 grab a cup of coffee.

15 So General Scowcroft, when you  
16 are ready, sir.

17 CHAIR SCOWCROFT: Good morning.  
18 Welcome back to this meeting of the Blue  
19 Ribbon Commission on American's Nuclear  
20 Future.

21 Before we get started I'd like to  
22 remind the audience that at the end of

1       today's session, we will hear from any  
2       member of the audience who wishes to speak.

3               A sign-up sheet for the public  
4       comment period is available at the  
5       registration desk. Please sign up before  
6       10:30 so we have an accurate count. The  
7       amount of time allocated to each speaker, as  
8       I said yesterday, will depend on the number  
9       who sign up to speak.

10              We will now turn to the final  
11      panel session for this meeting. Yesterday we  
12      received very helpful input on the facility-  
13      siting process and on the scope and  
14      organization of our nation's nuclear waste  
15      management entity.

16              Of course we can't run an  
17      organization or siting process without the  
18      means to pay for it. So today we will focus  
19      on financial considerations, including  
20      providing assured access to the Nuclear  
21      Waste Fee and Fund.

22              We have another outstanding panel

1 with us today, including: Joe Hezir, Vice-  
2 President of the EOP group and a former  
3 deputy associate director for energy and  
4 science in the Office of Management and  
5 Budget.

6 Michael Hertz, deputy assistant  
7 attorney general in the civil division of  
8 the Department of Justice.

9 Elgie Holstein, a senior director  
10 for strategic planning at the Environmental  
11 Defense Fund. Elgie served as DOE chief of  
12 staff and as a former associate director for  
13 natural resources, energy and science at  
14 OMB.

15 Dr. Mike Telson, Vice-President  
16 at General Atomics and a former DOE chief  
17 financial officer.

18 and Kevin Cook, former clerk to  
19 the Energy and Water Development  
20 Appropriations Subcommittee in the U.S.  
21 House of Representatives.

22 I thank you all for being here,

1 gentlemen. As was done yesterday, this  
2 session is structured as a roundtable, so we  
3 can devote most of our time to a dialogue on  
4 the major considerations.

5 But before we start, we would be  
6 pleased to have opening statements from any  
7 of you who wish to make initial comments.

8 MR. FRAZIER: Mr. Chairman.

9 CHAIR SCOWCROFT: Yes.

10 MR. FRAZIER: I just wanted to  
11 remind you that I think Congressman Hamilton  
12 is online.

13 CHAIR HAMILTON: Yes, I am online  
14 and listening. Thank you very much.

15 CHAIR SCOWCROFT: Oh, thank you.

16 CHAIR HAMILTON: Welcome to the  
17 panel and I look forward to hearing them  
18 here in frozen Indiana.

19 (Laughter.)

20 CHAIR SCOWCROFT: Thank you very  
21 much. Yes.

22 MR. COOK: Good morning and thank

1       you, on behalf of all of us, thank you for  
2       inviting us to talk to you this morning.

3               This won't be an opening  
4       statement per se, but just a quick  
5       introduction so you understand my  
6       perspective on the issue.

7               By training, I am a geologist and  
8       an attorney. I spent about 21 years with  
9       different federal agencies working as a  
10      geologist, a hydrologist, a physical  
11      scientist and a project manager.

12              But most relevant to Yucca, I  
13      have spent 11 years as congressional staff  
14      in the House of Representatives, three years  
15      as science adviser to the House Energy and  
16      Commerce Committee, and most recently, eight  
17      years on the Energy and Water Appropriations  
18      Subcommittee.

19              And as we talk about financing  
20      issues today, there's one, overarching theme  
21      that sort of is -- I need to share with you,  
22      and this came up in the discussion yesterday



1 morning with the first panel.

2           There was a lot of discussion on  
3 the issue of public trust, and someone made  
4 the very valid point that it is much easier  
5 to lose it than to gain it.

6           I think all those comments are  
7 very applicable to congressional trust as  
8 well, and think it's important for the  
9 Commission to recognize that however  
10 comprehensive and intellectually a solution  
11 you folks can propose, you start out somehow  
12 in a credibility hole with Congress -- not a  
13 credibility hole due to anything the  
14 Commission has done, but due to the history  
15 of Yucca Mountain, coupled with the history  
16 of something called GNEP, the Global Nuclear  
17 Energy Partnership.

18           And so I think a lot of the  
19 members in Congress, a lot of the staff and  
20 a lot of the communities out there who  
21 potentially might be interested in whatever  
22 the follow-on solution becomes, feel they

1 have been burned twice.

2 And so as we talk about  
3 comprehensive funding fixes and some of the  
4 hurdles that we have to overcome, one of the  
5 thoughts I'd like to leave you with is  
6 taking some baby steps toward  
7 implementation, partly to help regain that  
8 confidence.

9 CHAIR SCOWCROFT: Thank you, Mr.  
10 Telson.

11 DR. TELSON: Thank you. General  
12 Scowcroft, Congressman Hamilton and  
13 distinguished members of the Committee,  
14 thank you for inviting me. I appreciate it.

15 I have been involved with this  
16 program for many, many years, since the  
17 early '80s when I was energy staffer for the  
18 House Budget Committee and then I went to  
19 DOE where I became the CFO, and I just want  
20 to make a couple of points.

21 First, these are not the views of  
22 my employer. These are my personal views.

1       The first point that I would make is that  
2       financing this program, fixing the financing  
3       of this program is extremely important.

4               It's not -- it may even be  
5       necessary for the functioning of this  
6       program properly. But it's not the  
7       sufficient condition for it. You are well  
8       aware of all the other problems that are  
9       involved.

10              It would be extremely helpful,  
11       however, if the program were able to make  
12       decisions on the basis of what is needed to  
13       ensure the highest benefit to the taxpayer  
14       at the lowest possible long-run cost.

15              After all, the government in  
16       effect owns the waste and it's the taxpayer  
17       that will get stuck with the bill, if it is  
18       not done right. Decisions based on arbitrary  
19       financial constraints almost invariably will  
20       be more costly in the long-run.

21              So -- and we are going into a  
22       period of budgetary decisionmaking, where,

1       because the money out of this program counts  
2       -- the existence of the \$24 billion corpus  
3       of the \$750 million fee, is irrelevant to  
4       funding for this program.

5               That's not exactly the way it was  
6       envisioned when it started, but a long  
7       process that Mr. Sharp will remember between  
8       Gramm-Rudman being involved in 1985 and the  
9       Budget Enforcement Act of 1990, have made it  
10      almost impossible to fix this problem, and  
11      I'm not even sure it can still be fixed.

12             There are other things that have  
13      happened recently that make it very hard to  
14      fix, but it is worth thinking through all  
15      the options and seeing if you can get there.

16             The second point I would make is  
17      that you can separate the financing from the  
18      structure and governance. In other words,  
19      you might want to have a corporation. You  
20      might want to have an office, a separate  
21      office, you might want to have something in  
22      DOE. You might want to have a separate

1 department.

2           It doesn't matter. The financing  
3 is a separate issue. You could do one  
4 without looking at the other. Too often it  
5 sounds like these are meshed together when  
6 they are not.

7           Third point I would want to make  
8 is that you need to think of what kind of  
9 oversight the Congress would provide on this  
10 financing, because you can't take politics  
11 out of the decision to fund this program.

12           It's just a question of, do you  
13 want this, do you want the Congress to be  
14 providing the money on an annual basis, like  
15 it does now, even if it doesn't count, even  
16 if it doesn't count in the budget?

17           You can actually have Congress  
18 provide money that doesn't count in the  
19 budget. One example of that is the nuclear  
20 waste fund -- Nuclear Regulatory Commission  
21 funding, where basically 90 percent of their  
22 budget is on a full cost-recovered basis.

1                   That is, if you spend something,  
2                   you make a fee, you set the fee equal to  
3                   that funding, so the net is zero, okay? So  
4                   you are spending 500 million but it counts  
5                   as zero.

6                   The FERC, the Federal Energy  
7                   Regulatory Commission, has a similar  
8                   approach. There are other fixes, but I think  
9                   all of them will involve some kind of  
10                  scoring penalty unless we get really, really  
11                  clever about it.

12                  Well, in any event, like I said,  
13                  intent doesn't count for much, and the  
14                  intent back in eighty -- when this thing got  
15                  done, was to make it easier for the program  
16                  to be funded.

17                  That's 30 years ago, and fixing  
18                  it will be attacked as spending money even  
19                  if it isn't really, but this is a time when  
20                  pressure is really strong to keep it from  
21                  spending. That's all I want to say. Thank  
22                  you for the opportunity.

1 CHAIR SCOWCROFT: Thank you very  
2 much Mr. Telson. Mr. Holstein?

3 MR. HOLSTEIN: Mr. Chairman,  
4 thank you, and I'll be very brief and really  
5 pick up on the remarks of my predecessors  
6 here, but begin by saying that my  
7 involvement in this issue began in the  
8 1970s, when I was a young congressional  
9 staffer and was bright-eyed and bushy-tailed  
10 about the prospects of moving forward with  
11 alacrity in solving the nation's nuclear  
12 waste problems.

13 I think my appearance today with  
14 you, including my full head of grey hair,  
15 would suggest that this is a longer and more  
16 difficult process than I believed at the  
17 time.

18 I later served as a staff member  
19 to an advisory committee now perhaps  
20 forgotten by many people, that was appointed  
21 by President Carter, called the State  
22 Planning Council on Radioactive Waste

1 Management.

2 And the state planning council  
3 actually brought together governors,  
4 legislators and others to consider the  
5 intergovernmental aspects of siting and  
6 building both high- and low-level  
7 radioactive waste facilities in the United  
8 States under the chairmanship of then  
9 Governor of South Carolina, Dick Riley, who  
10 I think did a marvelous job of balancing the  
11 interests of the various parties at the  
12 table.

13 And I would suggest strongly to  
14 the members of the Commission that you have  
15 your staff take a quick look back at some of  
16 their findings and conclusions.

17 And then later served in the  
18 Clinton Administration as a member of the  
19 Office of Management Budget, where I served  
20 as the associate director for natural  
21 resources, energy and science, and then  
22 later, as chief of staff of the Energy



1 Department.

2           So I have looked at this issue --  
3 I should also mention, in full disclosure,  
4 that I represented for a period of time Nye  
5 County, Nevada, which of course became the  
6 jurisdiction ultimately within which Yucca  
7 Mountain, the only -- at Congress's  
8 direction, the only site to be characterized  
9 for a high-level waste repository, and  
10 represented them during a period of time  
11 when they took no position on the  
12 repository, other than that there should be  
13 full public participation and that there  
14 should be a process for resolving the  
15 technical and scientific issues that would  
16 undoubtedly come up.

17           I mention that service because it  
18 underscores a key point about the budget,  
19 which is that if you -- which is that there  
20 is a premise in the discussions about  
21 funding for the waste program, which is that  
22 somehow or another if you could isolate the

1 funding, the budget for the program, you  
2 could move the project along more quickly.

3 And while this has been true from  
4 time to time, the budgetary considerations  
5 cannot be separated from a very strong  
6 program plan. So that when you look at  
7 another example where a budget has been -- a  
8 program has been taken so-called off-budget,  
9 as in the case of the Highway Trust Fund,  
10 where in effect the authorizers became the  
11 appropriators, it can be a misleading  
12 example.

13 Because the Highway Trust Fund  
14 Trust Fund actually funds a process that is  
15 very straightforward, albeit with, over the  
16 years, many discussions in Congress about  
17 the appropriate allocation formulas.

18 But the actual process, the work  
19 program funded by that trust fund, is very  
20 straightforward.

21 Whereas in the high-level waste  
22 program, there's been, from the very

1 beginning of the program -- and this was  
2 known by Congress -- there's been huge  
3 uncertainties.

4 And so, to be very specific, when  
5 Yucca Mountain was actually first excavated,  
6 it became apparent that it's geologic  
7 characteristics and its ability to meet the  
8 requirements for long-term safe containment  
9 of high-level radioactive waste, all of  
10 those assumptions ended up being very  
11 different from what had been assumed prior  
12 to excavation of the mountain.

13 It ended up, for example, being a  
14 lot wetter than they thought. It ended up  
15 being much more fractured than they thought.  
16 All of these kinds of things had  
17 implications not only for the suitability of  
18 the mountain, but also for the pace and  
19 direction and ultimately design of the final  
20 repository site.

21 And so those kinds of  
22 uncertainties add to costs and they tend to

1 change the schedule, not to mention what  
2 they do to the public discourse and  
3 congressional and state level engagement in  
4 the issue.

5 So I would simply say that the --  
6 to echo Mike's point -- that setting aside,  
7 or setting up a system by which you can have  
8 a more reliable and consistent funding  
9 level, and presumably a higher funding  
10 level, does not solve all of the problems.

11 And creating a fund that is off  
12 budget, particularly in this kind of  
13 program, and setting aside all of the  
14 resistance that exists, particularly in  
15 tight budgetary times, to taking anything  
16 off budget, will still be a challenge --  
17 will still present plenty of challenges to  
18 program managers and to congressional  
19 overseers, in moving the nation's nuclear  
20 waste programs forward. Thank you.

21 CHAIR SCOWCROFT: Thank you very  
22 much. Mr. Hertz.

1 MR. HERTZ: Thank you, Chairman  
2 Scowcroft, Chairman Hamilton, thanks for the  
3 invitation to appear before the Commission  
4 today.

5 As is well known to this  
6 Commission, in 1983 the Department of Energy  
7 entered into 76 standard contracts with  
8 entities that were producing nuclear power  
9 and agreed that by January 31st, 1998, it  
10 would begin accepting spent nuclear fuel  
11 created by the utilities.

12 In return, the utilities agreed  
13 to make quarterly payments beginning in  
14 1983, into the nuclear waste fund. Today,  
15 although utilities continue to pay fees, DOE  
16 has not commenced accepting spent nuclear  
17 fuel.

18 The commencement date for spent  
19 nuclear fuel acceptance is currently  
20 unknown, however DOE has repeatedly  
21 reiterated its continued commitment to  
22 meeting its obligations for accepting and

1 disposing of spent nuclear fuel.

2 Utility companies have filed 74  
3 cases in the United States Court of Federal  
4 Claims alleging that DOE's delay in  
5 beginning spent nuclear fuel acceptance  
6 constituted a partial breach of contract.

7 I would like to discuss the  
8 status of that litigation before the Court  
9 of Federal Claims and the status of cases  
10 before the United States Court of Appeals  
11 for the Federal Circuit, and the continuing  
12 liability being incurred by the United  
13 States from that litigation.

14 The potential liability arising  
15 from these cases is large, and conducting  
16 the litigation consumes significant  
17 resources of the Department of Justice.

18 Given these facts, the department  
19 looks forward to receiving and reviewing the  
20 recommendations of the Commission. We would  
21 hope that those recommendations, if  
22 implemented, provide a way for DOE to begin

1 performance and thereby reduce or limit the  
2 continuing liability.

3 In addition, we would expect the  
4 Commission's recommendations to shape future  
5 settlements. With regard to litigation, as I  
6 said, to date 74 cases have been filed with  
7 damages claims totaling \$6.4 billion.

8 Forty-nine cases are still  
9 pending before the Court of Federal Claims  
10 and the Court of Appeals for the Federal  
11 Circuit. Of the 49 cases, the trial court  
12 has entered judgment in 21 of those cases,  
13 all of which are pending on appeal.

14 There have been a number of  
15 significant appellate rulings establishing  
16 certain principles of law that apply to this  
17 litigation, first and foremost, that the  
18 government is in breach of its contract.

19 But the claims are for partial  
20 breach because the utilities are performing  
21 their obligations by continuing to pay the  
22 fee.

1                   So because it's a partial breach  
2                   case, the plaintiffs may only recover  
3                   damages for up until the time they filed  
4                   their complaint and must file new claims at  
5                   least every six years to recover additional  
6                   damages.

7                   This suggests that there is going  
8                   to be a continuous litigation cycle until  
9                   the government performs under the contracts  
10                  at the contractually required rate.

11                  Indeed, eight of the 74 cases  
12                  that I mentioned represent second-round  
13                  claims by the utilities.

14                  In 2008, the Federal Circuit  
15                  determined the rate of acceptance to be  
16                  applied as a measure of the government's  
17                  obligation in determination damages. This  
18                  rate that the Federal Circuit set is higher  
19                  than what the government had sought, and  
20                  higher than what the government had utilized  
21                  in prior settlement agreements.

22                  In addition to that rate



1 determination, we would expect appellate  
2 rulings relatively soon on whether  
3 plaintiffs may recover other types of costs  
4 in this litigation, including interest  
5 costs, costs of implementing legislative  
6 mandates set by the states on the storage of  
7 utilities, claims for diminution in value  
8 for plants that have been sold, claims for  
9 investing in Private Fuel Storage  
10 facilities, and certain Nuclear Regulatory  
11 Commission fees.

12           Between the settlements and the  
13 trial court judgments, current liability  
14 stands at \$2.2 billion, almost one billion  
15 in settlements and un-appealed judgments.

16           This amount covers approximately  
17 65 percent of the claim-years of liability  
18 that accrued between January 31st, 1998, and  
19 the end of 2009.

20           In addition to the approximately  
21 35 percent of the claim years through 2009  
22 that are not already subject to the -- of

1 settlements and judgments, additional  
2 government liability will accrue for as long  
3 as DOE is delayed in commencing spent  
4 nuclear fuel acceptance at contractually-  
5 required rates.

6 We have made efforts to resolve  
7 these cases through settlement. To date,  
8 seven cases have been resolved through  
9 settlement, cover 38 of the existing 118  
10 nuclear plants.

11 With the appellant ruling on  
12 acceptance rate, we have met with a large  
13 group of plaintiff representatives to  
14 develop a common framework that could be  
15 used to resolve additional cases.

16 Those efforts are now continuing  
17 with plaintiffs and individual cases.  
18 Because many of the recurring issues have  
19 been resolved as the cases have worked their  
20 way through the trial and appellant process,  
21 the ultimate success of many types of claims  
22 is now more predictable to both the

1 government and the utilities.

2 We proposed to the utilities that  
3 we enter into settlements with them for the  
4 legitimate claims to date, and provide an  
5 administrative process to resolve their  
6 claims for costs incurred through December  
7 31st, 2013, by which time the administration  
8 will have the Commission's recommendations.

9 One key factor in that framework  
10 is the termination date for the settlement  
11 2013. Although those settlements could be  
12 extended by mutual agreement of the parties,  
13 we picked that date because at that point  
14 the administration will know the  
15 Commission's recommendations and if  
16 appropriate, can use them in shaping future  
17 settlements between the parties.

18 With regard to settlements and  
19 judgments, settlements and judgments are  
20 paid out of the Judgment Fund, which is a  
21 permanent, indefinite appropriation.

22 Although Congress provided in the

1 Nuclear Waste Policy Act the utilities and  
2 their ratepayers would be responsible for  
3 paying the storage of spent nuclear fuel, at  
4 least currently, a substantial portion of  
5 those storage costs are being paid by the  
6 taxpayers through the Judgment Fund.

7 This litigation has been  
8 expensive. The costs to the Department of  
9 Justice have been significant. The  
10 Department of Justice has conducted 27 spent  
11 nuclear fuel trials through the end of 2010.

12 Barring settlements, we estimate  
13 we will conduct an additional 12 trials  
14 before the end of 2012.

15 Through 2010 we have spent  
16 approximately \$200 million for experts,  
17 attorney time and litigation support. All  
18 these costs are paid out of general  
19 appropriations for the Civil Division of the  
20 Department of Justice.

21 With regard to continuing  
22 liabilities. DOE's current estimate of total

1 potential liability is \$16.2 billion. I  
2 would note that as recently as 2009, DOE's  
3 estimate was \$13.1 billion.

4 Three things about these numbers  
5 are significant: one, DOE's estimates are  
6 based on past settlements, which used a  
7 lower rate of acceptance than what the Court  
8 of Appeals for the Federal Circuit has now  
9 set; two, the DOE estimates assume  
10 performance begins in 2020; and three, the  
11 liability doesn't end for the government  
12 until we reach a cross-over point, not  
13 simply when DOE begins acceptance.

14 A cross-over point is the point  
15 at which DOE accepts the same amount of fuel  
16 that it would have accepted had DOE begun  
17 performance in 1998, at the rates identified  
18 by the Federal Circuit.

19 The two biggest factors in  
20 determining the cross-over point will be  
21 when DOE begins performance and at what rate  
22 it performs.

1                   For these reasons, the Department  
2                   looks forward to the Commission's draft  
3                   report. Any recommendation adopted that  
4                   allow DOE to begin performance particularly  
5                   if it's at a faster rate than the rate  
6                   identified by the Federal Circuit, will help  
7                   to reduce the government's liability.

8                   However, we must caution the  
9                   Commission to be mindful of the existing  
10                  obligations of the parties embodied in the  
11                  standard contract.

12                  The Commission's recommendations,  
13                  if enacted, should not substantially alter  
14                  the benefit of the bargain between the  
15                  parties.

16                  Changes that do substantially  
17                  alter that bargain could lead to taking  
18                  claims under the Fifth Amendment of the  
19                  Constitution, further breach claims, or even  
20                  claims of total breach by the utilities.

21                  We plan to review the  
22                  Commission's draft report carefully, provide

1 input as appropriate given our expertise  
2 with these cases and government contract  
3 generally. I look forward to answering any  
4 questions you may have. Thank you.

5 CHAIR SCOWCROFT: Thank you very  
6 much. Mr. Hezir.

7 MR. HEZIR: Yes, General  
8 Scowcroft, Congressman Hamilton, members of  
9 the Commission. Thank you for the  
10 opportunity to meet with you this morning.  
11 We hope to make this an interactive session,  
12 so I am going to make my initial comments  
13 very brief.

14 My own background and experience  
15 with the nuclear waste program is that I  
16 spent 18 years in various career staff  
17 positions at the Office of Management  
18 Budget, about maybe half of that time spent  
19 with some oversight over the nuclear waste  
20 programs.

21 Since that time I have been doing  
22 consulting work including serving as a

1 consultant and adviser to the Nuclear Energy  
2 Institute on various budgetary matters  
3 related to the nuclear waste fund.

4 What I'd like to do this morning  
5 is maybe just start off by indicating, at  
6 least from my perspective, a couple of the  
7 key problems, I think, that we need to  
8 address, because I think if we are going to  
9 be talking about various options and  
10 solutions, I think it might be helpful just  
11 to kind of set sort of a framework for that.

12 So what I'd like to do is just  
13 kind of show a few slides that would go into  
14 that. If you could bring up the one that  
15 says "introduction."

16 And then I'd ask my colleagues as  
17 well to comment on those because I think we  
18 probably, in many of these areas, share the  
19 same perspective, but in some of these we  
20 may have slightly different perspectives.

21 The one that says introduction.  
22 So let me start off by saying, then, that



1       there's really four areas that I think that  
2       we need to think about in thinking about  
3       what the funding solution for the nuclear  
4       waste fund should be.

5               And the first one is the issue of  
6       contracts. I think that one of the things  
7       that Michael Hertz's presentation  
8       illustrated, is that the government does  
9       have a very firm contractual obligation  
10      here, and it really is very different than  
11      typical government contracting in that  
12      there's -- there really is no provision for  
13      termination. We are not subject to  
14      availability of funds. We have a very unique  
15      contractual commitment.

16             And the point I want to make here  
17      is a very simple one, is that given the  
18      current structure of the waste fund, the  
19      requirement, particularly for the annual  
20      appropriations requirement, does not provide  
21      a commensurate level of certainty to go with  
22      the certainty of the obligation that the

1 government has to execute.

2 My second point is that in  
3 looking at the solution to the ultimate  
4 disposal problem, whether it would be a  
5 repository, a recycling facility or some  
6 centralized interim storage facilities, we  
7 are looking at extremely large capital  
8 investments.

9 And these would be, by anyone's  
10 measure in the government, mega-scale,  
11 multi-year capital investment projects, and  
12 these would be much larger by several times  
13 anything that DOE has ever executed in the  
14 past, and the Department of Energy does have  
15 a long history of executing large capital  
16 projects, but we are now taking it almost  
17 really to a different level.

18 And the point I want to make is,  
19 again, in looking at the current nuclear  
20 waste fund is, the current fund and the  
21 current process -- budgeting process  
22 surrounding that fund really is not up to

1       that task.

2               There really is no provision for  
3       a capital budget and a separation of a  
4       capital and an operating budget. There's  
5       really no real multi-year budget planning  
6       process that currently exists, and we  
7       currently have a situation within DOE where  
8       any capital asset acquisition is funded on  
9       an incremental, annual basis.

10              So it's very difficult to plan a  
11       project and execute a project that may take  
12       a decade to do under those kinds of  
13       conditions. Next slide please.

14              The third point I wanted to make  
15       is that we have a -- and this is somewhat of  
16       an accounting problem, but I think it has an  
17       important public policy implication -- and  
18       that is that we account for the funds in the  
19       waste fund right now on a cash basis, but we  
20       really do not adequately account for the  
21       liabilities, which really requires  
22       accounting for some of these things on an

1       accrual basis.

2                   I mean, right now, we record the  
3       \$24 billion which is in the corpus, we  
4       record the annual fees and spending, but we  
5       don't really adequately account for the  
6       accrued liabilities.

7                   And again, just to use Mr.  
8       Hertz's presentation as an example, DOE does  
9       report in its annual financial statements  
10      the estimate for its liability risk, but  
11      that does not show up in any of the  
12      budgetary documents.

13                  And so when Congress, and  
14      particularly the appropriators, have to  
15      address the budget, they don't necessarily  
16      see the full picture.

17                  Likewise, while the fees are  
18      being paid in on an annual basis, they are  
19      really being paid as the fuel is being  
20      burned and so in theory, the government's  
21      liability for that fuel is being -- should  
22      be accrued at the same rate that the fuel is

1       being burned, but we have no current  
2       accounting for that.

3               And so we never really see the  
4       full picture of all of the -- not only the  
5       cash assets and the facility assets, but  
6       also what the full picture of the  
7       liabilities are.

8               And then again, my fourth point,  
9       and final point, is that we have a temporal  
10      problem and it's a very significant one.

11              The receipts are collected at a  
12      very uniform rate as nuclear power plants  
13      are in operation, typically over a 40-year  
14      period, and now with life extension, over 60  
15      years, and they are accrued and paid at a  
16      rate that is commensurate with the creation  
17      of the liability.

18              The spending on the other hand,  
19      the patterns are going to be very different,  
20      that we will have a long period of planning  
21      and development and then a period of very  
22      high capital expenditures, and then a very

1 long period which will extend over, you  
2 know, up to 100 years of operational  
3 obligations.

4 And right now, again, with the  
5 sort of the cash-based budgeting system that  
6 we have in the federal government, it's very  
7 hard to take credit for receipts that were  
8 received in early years that need to be  
9 spent in later years, and to deal with those  
10 very well in the budget.

11 And I think Mike Telson referred  
12 to this earlier, with the evolution of some  
13 of the budgetary rules with Gramm-Rudman and  
14 the Budget Enforcement Act, and the PAYGO  
15 requirements, it makes it extremely  
16 difficult then, to be able to balance the  
17 receipts and expenditures when they are over  
18 these very different time horizons.

19 So, just to kind of, just to  
20 summarize, I think those are really four  
21 things that at least from my perspective,  
22 that I think would be very important, that

1       whatever the solution is that this  
2       Commission recommends, that they -- that the  
3       solution be tested against the ability to  
4       address those problems.

5               And so I am going to stop right  
6       here and maybe offer my colleagues if they  
7       wish to comment any further, if we want to  
8       take any questions, and then we can maybe  
9       talk further about some options for how we  
10      might address that.

11             CHAIR SCOWCROFT: I want to thank  
12      you all very much for a very clear, if  
13      somewhat depressing picture of our  
14      situation. Do we have questions? Per.

15             MEMBER PETERSON: Thank you. I  
16      believe that the topics that we are covering  
17      today are probably among the most important  
18      elements of the overall policy framework  
19      that we need to investigate and so I would  
20      like to express my very sincere appreciation  
21      for the information that you have provided  
22      and this is very helpful.

1 I have, I think three questions.

2 The first is for Kevin Cook and it relates  
3 to this issue that clearly, at this point,  
4 Congress's confidence in the executive  
5 branch and the DOE in terms of how things  
6 have gone forward trying to implement policy  
7 to manage used fuel and high-level waste, is  
8 clearly, probably weak at this point.

9 In fact I know that there is  
10 perhaps a considerable amount of anger --  
11 actually I think everybody is angry at this  
12 point -- with everybody else.

13 So the -- in looking at some of  
14 the arguments for one might want to --  
15 through a change of statute, transfer these  
16 responsibilities to a new entity, I think  
17 that one of the logical reasons is that  
18 things have just not gone well at DOE here.  
19 There's other examples where things have  
20 gone well, but thinking that somehow you can  
21 fix it within DOE at this point, given the  
22 fact there's not even an Office of Civilian



1 Radioactive Waste Management in existence  
2 anymore.

3 So we have been looking at  
4 various ways to try to -- you know, what  
5 might be structures of a new entity, and we  
6 have started from the Voinovich bill as a  
7 point of departure because that seems to be  
8 a very logical thing to do and furthermore,  
9 it represents some of the initial thinking  
10 within Congress as to how to -- one might  
11 tackle this.

12 And I guess my question would be,  
13 is the Voinovich bill a good place to start,  
14 and if so, do you have any recommendations  
15 on things one might do to further improve  
16 upon it or to -- in terms of how it would  
17 structure a new federal corporation?

18 MR. COOK: I am not sure I'm the  
19 best qualified to offer an opinion on the  
20 right corporate or non-governmental  
21 structure. I think you are absolutely on  
22 target with the lack of confidence in DOE

1 right now, at least as far as I've been  
2 involved in this issue, I think it's at an  
3 all-time low, not necessarily on everything,  
4 cut certainly on nuclear waste issues.

5 I can maybe offer a partial  
6 answer to this, though. And this is -- this  
7 ties to something that Joe was talking about  
8 and actually Michael Hertz as well: the  
9 liability issues.

10 One of the frustrations that we  
11 always had was the disconnect between the  
12 funding side, where you had with annual  
13 revenues coming in, and a pretty large  
14 balance plus interest building up in the  
15 nuclear waste fund, and yet that liability  
16 that it was supposed to be paired against,  
17 and was supposed to solve, was never  
18 explicit in the federal budget.

19 And if you think that you are  
20 going to transition to some sort of fed-corp  
21 or public-private corporation, and you were  
22 on the Board of Directors for that, and when

1       you started up that new entity, you would  
2       think you would want to have an honest look  
3       at what are the assets I inherit and what  
4       are the liabilities I inherit.

5               This is one of those interim  
6       steps that I think we need to do, partly to  
7       restore the confidence in Congress that we  
8       have honesty and transparency in the budget.

9               We know we have to litigate and  
10      go through settlement discussions with  
11      utilities over these liabilities, but DOE,  
12      as was mentioned, in their financial  
13      statement, they have an estimate of what  
14      they think that liability amounts to.

15              Don't forget, that's only the  
16      liability for commercial spent fuel. There  
17      is another liability for the government-  
18      owned spent fuel and high-level waste.

19              But that's kind of an unseen  
20      number when you get to the congressional  
21      budget and appropriations process, and the  
22      risk of that, and why we are having this

1 discussion on financing, is people always  
2 used to perceive that the appropriators  
3 weren't spending the nuclear waste fund for  
4 Yucca, they were spending it on water  
5 projects.

6 That was not true. We never  
7 appropriated money out of the nuclear waste  
8 fund for a water project. There was  
9 certainly a tension within our larger  
10 allocations, that are called 302(b)s, which  
11 were a fixed number that we had to work with  
12 every year to generate an appropriation  
13 bill, that if a particular part of Congress  
14 wanted to go lower on Yucca, that would free  
15 up headroom for other priorities.

16 I think the bigger risk right now  
17 in this fiscal climate, and what makes it  
18 hard to take this off-budget, the kinds of  
19 things Mike Telson was talking about,  
20 there's so much concern over the deficit  
21 right now.

22 You have \$27 billion sitting on

1 the federal books in the plus column, and it  
2 is not really tied to anything, because that  
3 liability is invisible.

4 So I think from the high-level  
5 perspective in Congress, a lot of people are  
6 not going to want to give up that \$27  
7 billion in the plus column.

8 So one of the first steps,  
9 whatever entity is set up, whether it's a  
10 new agency, whether it's public-private,  
11 whether it's truly private, I think getting  
12 that liability back into the daylight is  
13 maybe the first step to whatever successor  
14 organization inherits the responsibility for  
15 Yucca Mountain. I think the starting point  
16 has to be an honest assessment of assets and  
17 liabilities.

18 MEMBER PETERSON: I think that  
19 that's a very good point, although based on  
20 my understanding of the legal obligation and  
21 the full-cost-recovery obligation of the  
22 contracts, there's no ambiguity about this

1 liability.

2 The federal government has to, in  
3 the end appropriate and spend this money.  
4 It's obligated to under the contracts and it  
5 can't change those contracts.

6 So the requirement in the end  
7 that that money be spent for this purpose, I  
8 think, is -- at least my understanding -- is  
9 completely unambiguous.

10 MR. COOK: I think that's  
11 correct, yes.

12 MEMBER PETERSON: So the fact  
13 that that contractual obligation is being  
14 ignored in the budget process seems to me to  
15 be -- well actually, I guess everybody  
16 should be angry with everybody else in this  
17 whole process.

18 Certainly, I'll have to tell you  
19 that when I talk to people about how the  
20 budget process works, at least my best  
21 understanding of the mandatory spending  
22 designation of the receipts, and the

1 discretionary spending designation of the  
2 expenditures, by the time I get through  
3 that, universally, they are really angry  
4 with this.

5           There's just no doubt about it.  
6 It's the sort of thing which is you know --  
7 this -- well anyway I don't want to go on  
8 with that any further because --

9           DR. TELSON: Thank you. The  
10 budget scorekeeping system was designed for  
11 legitimate reasons in a particular space and  
12 I've lived with it since 1974 in the budget  
13 act, when that was created, and it's just  
14 very hard to be fair to everybody. It's just  
15 very hard to integrate that other world,  
16 which is real, into this other world, which  
17 is a scorekeeping. So you go into  
18 scorekeeping world, which is a whole  
19 different world.

20           The thing I would say is that  
21 before scorekeeping world was invented,  
22 there was some idea that these other

1       considerations played, that was the world in  
2       1982, when Congressman Sharp was working on  
3       it.

4                     It changed radically in `85 and  
5       it really changed for good in 1990, in the  
6       Budget Enforcement Act.

7                     MEMBER PETERSON: I understand,  
8       so let me --

9                     CHAIR SCOWCROFT: And if you  
10      don't think it can be worse, go to pre-1974  
11      when we didn't bother to keep score in the  
12      U.S. Congress, I think, if you want to see  
13      some really good budgeting.

14                    MEMBER PETERSON: So the next  
15      question relates to another topic, which is  
16      clearly not controversial at all, but this  
17      is the taxpayer liability that is being  
18      built up.

19                    And what I'd like to ask is some  
20      questions that relate to the role that  
21      centralized storage and on-site storage  
22      could play in terms of addressing the



1 contractual liability as opposed to direct  
2 disposal of spent fuel.

3 And for a little bit of  
4 background of course, to shift towards  
5 centralized storage again is going to  
6 require some changes in policy and we have  
7 to confirm that centralized storage is being  
8 used as an interim measure related to  
9 disposal. I think there's some legal issues  
10 about that.

11 But the key thing about using  
12 storage, interim storage for spent fuel, is  
13 that there's pretty compelling technical and  
14 policy and political arguments for shifting  
15 toward that as a primary strategy, one of  
16 them being that well, even under the earlier  
17 schedules for completing Yucca Mountain,  
18 which hypothesized that you would be  
19 delivering spent fuel to Yucca Mountain in  
20 2017, frankly, from the technical side, that  
21 was almost certainly never going to happen  
22 on that schedule, given the need to build a

1       \$3 billion railroad and actually construct  
2       facilities and stuff.

3               You're talking about the  
4       realistic schedules being a decade or more  
5       longer, when you look at how long it takes  
6       DOE to actually execute things.

7               So realistically, trying to get  
8       spent fuel into disposal on that sort of  
9       schedule in Yucca mountain was not going to  
10      happen that fast.

11              And the real liabilities to the  
12      taxpayers, again, the actually liability is  
13      probably larger.

14              So the other thing is that it's  
15      actually very controversial when you talk to  
16      people, the idea that you should spent fuel  
17      into disposal, particularly when we have  
18      high-level waste that unambiguously merits  
19      disposal.

20              In fact we have a very  
21      interesting proclamation signed by 28 of the  
22      42 members of the state legislature in New

1 Mexico that describes what they would  
2 recommend doing, which involves things in  
3 southern New Mexico.

4 But it's very clear here. They  
5 are thinking in terms of disposal for  
6 defense high-level waste and commercial  
7 high-level waste, but interim storage for  
8 spent fuel.

9 So given that there seem to be  
10 compelling reasons to look at the use if  
11 interim storage for spent fuel, my question  
12 is, once the government has capacity to move  
13 spent fuel into centralized storage, then  
14 one of the key questions is well, what is  
15 the rate at which you could accept it.

16 And if you, at that point, were  
17 to authorize the fee revenues from the  
18 nuclear waste fund fee, could be paid --  
19 used to reimburse utilities that would elect  
20 to use interim storage for the total amount  
21 that you saved from not doing centralized  
22 storage, which would be potentially -- you

1 know, larger than costs of on-site storage.

2 If you started to have utilities  
3 electing to take that option, would that  
4 help potentially on the rate of acceptance  
5 problem?

6 And because there is a logistic  
7 challenge just to move that much fuel into  
8 centralized storage purely to comply with  
9 the contract.

10 Furthermore, it would be a dumb  
11 thing to do in practice because for  
12 operating reactors, frankly, for technical  
13 and economic reasons, on-site storage is  
14 probably better.

15 So that would be a question for  
16 Michael Hertz.

17 MR. HERTZ: So I think under one  
18 view of what the Federal Circuit has done,  
19 that they have an acceptance rate ramping up  
20 to 3,000 metric tons per year, now in fact  
21 literally what they did was adopt an annual  
22 capacity report from an earlier year that

1       only ran through 2010, I believe.

2                       While one wouldn't normally think  
3       that the contractual rate would go down, it  
4       may be open to argue that in fact, under the  
5       technical terms of what they did, and if you  
6       had new legislation authorizing the interim  
7       storage, that you could argue for a lower  
8       rate, that something that maybe that -- more  
9       consistent with interim storage as opposed  
10      to a permanent repository, and that you  
11      would get to a new crossover point earlier  
12      than you would, let's say under the 3,000  
13      metric tons.

14                     And if you got to a new crossover  
15      point, and the court accepted that, you  
16      could potentially limit the government's  
17      liability under the contracts.

18                     MEMBER PETERSON:   I guess because  
19      any utility that would elect to choose the  
20      option for the on-site storage for their  
21      operating reactors in some sense would be  
22      settling their contract, but then that could

1 count against the rate, I guess is the  
2 question, or do you still have to achieve  
3 that full rate of movement of fuel?

4 MR. HERTZ: No -- well, I guess I  
5 would have to think about that, whether it  
6 would actually come off the rate. But I  
7 mean, you know, if you have the agreement of  
8 the utilities, if you actually amend the  
9 contracts, if you provide new legislation  
10 and you provide a new contractual provision  
11 that gives this election to do this, I mean,  
12 in theory by contract you can accomplish  
13 almost anything with the agreement of the  
14 parties.

15 I don't know where the utilities  
16 would be on this question, you know, whether  
17 it would be attractive enough for them to do  
18 it would obviously depend on the specific  
19 terms and things along those lines.

20 MEMBER PETERSON: Very good.  
21 Final question is for Joe. This relates to  
22 making sure that I have a clear

1 understanding of the level of discretion  
2 that the Secretary of Energy has, not just  
3 in terms of assessing the adequacy of the  
4 fee, and changing the fee that is collected  
5 if there's a determination that the amount  
6 that is being collected is not sufficient or  
7 is overly sufficient to fund full-cost  
8 recovery for the government of the costs of  
9 providing transportation, storage and  
10 disposal of the spent fuel.

11 So the question that I have is,  
12 does that also extend to the capability to  
13 renegotiate the -- or to change the  
14 regulations and perhaps to have utilities  
15 retain some of those funds and collect them  
16 and not send them into the federal treasury,  
17 and analogous to the way that some of the  
18 funds for spent fuel generated before 1982  
19 are currently being held by utilities rather  
20 than having been transferred into the  
21 federal treasury.

22 This, of course, is an

1 interesting thing because it's a mechanism  
2 that might be used to change how much money  
3 is -- where the money is going at this  
4 point.

5 MR. HEZIR: Yes, I think we need  
6 to separate -- there's two separable issues  
7 here. One is the level of the fee and the  
8 other is the timing of the payment.

9 The level of the fee clearly is  
10 set in statute, and there's the statutory  
11 procedure for how the Secretary could  
12 determine the adequacy of the fee, and those  
13 -- and that is really governed by statute.

14 The statute gave discretion  
15 though to the Secretary in terms of the  
16 timing in which the fees get paid into the  
17 treasury, so while the obligation is there,  
18 there is some flexibility as to when the  
19 check is actually written.

20 And in the case of the one-time  
21 fees, which were the fees that were  
22 established for the pre-1982 spent fuel, DOE



1 actually gave the utilities three different  
2 options for how they could pay their  
3 obligation.

4 The obligation amount was fixed  
5 but how they paid it was not and so  
6 utilities had a choice of either paying that  
7 one-time fee, as it's called, either in a  
8 lump sum or in an installment plan over a  
9 10-year period, or that utilities could wait  
10 and pay the fee at the time of the first  
11 fuel shipment that was accepted by DOE.

12 And the only difference among  
13 those three options is that if they didn't  
14 pay the full amount, they would then accrue  
15 interest on the amount, so that when they  
16 did pay at a future date, they would pay  
17 with interest.

18 And that was all established by  
19 regulation and ultimately written into the  
20 standard contract. And so, it would seem  
21 that you could do something similar to that  
22 with respect to the annual fees, the one-mil

1 fee, whereby the utilities would still be  
2 obligated to accrue and collect the one-mil  
3 fee, but under the current regulations they  
4 need to make their payments quarterly.

5 But there's no reason why that  
6 payment schedule could not be adjusted. So,  
7 for example, it could be set to match the  
8 spending level, so that we could address the  
9 problem, at least address one of the current  
10 problems, which is the fact that the fees  
11 are coming into the treasury at \$750 million  
12 a year and very little of that money is  
13 being spent.

14 And consequently, because of the  
15 budgetary rules, it becomes extremely  
16 difficult to spend that money in any future  
17 year.

18 But if you were able, then, to  
19 allow the utilities to hold that money in a  
20 reserve, they could then pay that money in a  
21 future year when the spending would actually  
22 occur, so you could match the timing of the

1 receipts and the spending and meet the  
2 budgetary cash flow rules.

3 One thing I would add to that,  
4 though, is if one were to consider that kind  
5 of proposal, that we are not necessarily  
6 talking that the -- I want to make it clear,  
7 the obligation is still there that the  
8 utility would have to collect the one-mil  
9 fee, and in fact it may work like the --  
10 currently the one analogy would be the  
11 decommissioning funds that utilities are  
12 required to keep under NRC regulations.

13 So they actually create sinking  
14 funds where they put a certain amount of  
15 cash aside every year so that the time that  
16 the plant is then decommissioned, there's  
17 monies available to decommission it.

18 And those funds are managed by  
19 the utilities, they are held by the  
20 utilities, but they are subject to, in this  
21 case, NRC regulation.

22 And one could conceive of a

1 similar type of scenario where this could be  
2 done under DOE or under a future program.

3 MEMBER PETERSON: And this, if I  
4 understand correctly, would involve a  
5 rulemaking to change 10 CFR 961, and that  
6 would take a bit of time. But it's something  
7 that in principle could be done?

8 MR. HEZIR: It appears that it is  
9 something that could be done under existing  
10 law, but it definitely would require a  
11 change in the CFR part 961, and obviously it  
12 would also require an amendment to the  
13 standard contracts, so obviously the  
14 utilities would have to see some value in  
15 wanting to make the change.

16 MR. HOLSTEIN: Putting my old OMB  
17 hat on, I would have to say that from a  
18 scorekeeping perspective, I don't think that  
19 solves the problem, nor do I think it is  
20 analogous to the nuclear power plant  
21 decommissioning funds.

22 And the reason for that is

1       because the statute very clear creates the  
2       nuclear waste fee in order to fund a federal  
3       program.

4               So regardless of who holds those  
5       funds, and there are many examples across  
6       the government of various parties holding  
7       and administering funds, but they are still  
8       deemed to be federal receipts, and will  
9       still be subject to the kinds of trade-offs  
10      that become particularly binding, the more  
11      budgetary discipline you have.

12             I think, in thinking back to  
13      Kevin's comments about the way in which the  
14      debate over whether or not water projects,  
15      which are funded in the same appropriations  
16      bill as the nuclear waste program, whether  
17      or not -- the argument about whether or not  
18      those water projects in effect complete with  
19      the nuclear program.

20             I think one could debate that  
21      point but what I think is not debatable is  
22      the fact that, like the water projects, the

1 nuclear waste program has been regarded by  
2 many appropriators, and indeed by OMB, as  
3 being a dialable proposition, one that --  
4 many of these large water projects are  
5 multi-year, even multi-decadal in duration.

6 And that's why sponsors of these  
7 projects often seek, first and foremost,  
8 simply to get them started, knowing that  
9 once they are into the process, though the  
10 numbers, the dollars may be dialed up or  
11 down from year to year, the project simply  
12 goes forward for many years, and a long-term  
13 liability is in fact created.

14 A very similar approach has been  
15 taken, whether it was intended that way or  
16 not, the practical effect has been very  
17 similar and both OMB and I would submit the  
18 appropriators have tended to approach the  
19 program with this sort of dialability  
20 philosophy.

21 Finally I would say that in --  
22 and commend another report to you if I may,

1 and that is in 1991, the National Academy of  
2 Sciences provided support to Secretary of  
3 Energy's Advisory Board.

4 At that time the Secretary  
5 created a task force to examine the  
6 connection between public trust and  
7 confidence in the government's management of  
8 the waste program on the other hand, and the  
9 success of the program on the other, in  
10 other words, the ability of the government  
11 to move the program forward.

12 And the Academy and the task  
13 force found hands down that the -- that  
14 however you structure the program, if you  
15 don't maintain the public trust and build  
16 public trust and confidence in the  
17 scientific integrity of the program and  
18 maybe the financial integrity as well.

19 Ultimately delays will sneak into  
20 the system of one kind or another, whether  
21 their origins be legal, political,  
22 legislative or what have you.

1                   MEMBER PETERSON:   Might I take  
2                   one more question? Okay. Oh.

3                   MR. COOK:   I may add a comment to  
4                   your second question on interim storage, and  
5                   this won't be a quantitative answer in the  
6                   sense that Michael Hertz gave you.

7                   But I think there's two other  
8                   values to interim storage as you proposed  
9                   it. One is in the sense of one of those  
10                  confidence-building measures. I think at  
11                  some point, the government has to start  
12                  accepting some commercial spent fuel  
13                  somewhere, to show that they are serious  
14                  about solving the problem, not just kicking  
15                  the can down the road.

16                  MEMBER PETERSON:   Absolutely,  
17                  yes.

18                  MR. COOK:   Where we thought the  
19                  place to start was with the closed-down  
20                  plants, because they don't have the option  
21                  of pairing it up with storage in an  
22                  operating plant.



1           The other value is a lesson that  
2       we picked up from I think one of the  
3       Scandinavian countries, who, one of the  
4       first decisions they made was to build  
5       centralized interim storage to give them  
6       time, to give them some headroom if you  
7       will, to do a logical siting process.

8           Now we have not only the  
9       challenges of siting any new facilities, but  
10      if this Commission is going to recommend a  
11      new technological approach to commercial  
12      spent fuel, namely some version of an  
13      advance separation process, maybe coupled  
14      with fast reactors, that's going to take  
15      some time to get to technological maturity,  
16      coupled with time to site those facilities.

17           Interim storage, in some sort of  
18      government acceptance of some of the  
19      commercial spent fuel, while it not solve  
20      the liability and acceptance rates problems  
21      entirely, it does buy you some time to get  
22      those other solutions developed and in

1 place.

2 MEMBER PETERSON: I agree, and  
3 furthermore the goal of preserving the  
4 option to be able to do that is much better  
5 served if you utilize interim storage rather  
6 than early placing material -- spent fuel  
7 early into disposal.

8 The final question relates to --  
9 it's another one of the very arcane topics  
10 associated with trying to figure out finance  
11 in a weird world where the revenues are  
12 mandatory spending and the expenditures are  
13 discretionary.

14 But -- and this is a question for  
15 Joe too. Could you explain a bit how the  
16 congressional PAYGO way of treating any  
17 changes here would -- actually maybe just to  
18 go directly to the executive branch order on  
19 PAYGO, its treatment of a change in the  
20 receipts, that is reducing the amount to the  
21 point where what you collect matches what  
22 you spend, that would be a change in

1 mandatory spending that under executive  
2 PAYGO, you would have to -- if you were to  
3 off-set, would be off-set by other mandatory  
4 spending and there is not much in the way of  
5 mandatory spending in DOE, right?

6           Whereas if Congress were to do  
7 this, they would end up handling it  
8 differently, which goes back to the  
9 fundamental point that what is being done  
10 right now doesn't make any sense, as best I  
11 can tell, if the different PAYGO ended up --  
12 you would treat it completely differently  
13 whether it's Congress or whether it's the  
14 executive branch.

15           Could you discuss that?

16           MR. HEZIR: Sure. Let me start  
17 off by saying that any -- first of all we  
18 are talking about the mandatory side of any  
19 mandatory spending which is, in the case of  
20 the nuclear waste fund, the fee receipts.

21           A statutory change to the fee  
22 receipts would trigger what is called

1 pay-as-you-go or PAYGO rules in Congress and  
2 right now there's a certain -- there's  
3 actually differences between the House and  
4 Senate in terms of how those rules apply.

5 But those rules would require  
6 that any change that would have the effect  
7 of increasing the deficit would need to have  
8 an equal and off-setting decrease.

9 There is, if an agency takes an  
10 administrative action that has the effect of  
11 changing mandatory spending, under current  
12 law that is typically considered as a re-  
13 estimate and is not subject to a PAYGO  
14 requirement.

15 In the -- about some time in the  
16 second term of the Bush administration, OMB  
17 put out a memorandum saying that well, we  
18 would like to start applying the same PAYGO  
19 requirement to administrative actions that  
20 Congress is applying to legislative actions,  
21 so that if an agency were to propose a  
22 change, whether it through rulemaking or

1 some administrative practice that would have  
2 the effect of changing mandatory spending,  
3 that they would also be required to propose  
4 some form of an off-set, and there were  
5 obviously provisions for exceptions to that.

6 That practice was looked at  
7 recently by the Congressional Research  
8 Service and they said although this  
9 requirement is on the books, they can only  
10 find one case where it was ever used and  
11 that had to do with a Department of  
12 Agriculture conservation reserve program.

13 So it's an administrative policy  
14 that is currently in effect. In the last  
15 year's budget, the Obama administration said  
16 that they were going to continue to follow  
17 that policy, but again, we don't know of any  
18 particular examples of when it has actually  
19 been applied.

20 So I think the answer is it's  
21 there in principle, but probably more  
22 flexible. One final point I would add, is

1       that whether it's PAYGO or not, clearly any  
2       change that affects the timing of the  
3       payments would change the deficit estimate  
4       and the only question is whether it would be  
5       considered as a re-estimate or whether it  
6       would be considered something that would be  
7       subject to PAYGO.

8               DR. TELSON: I might expand on  
9       that a little bit. The whole mandatory in  
10      the discretionary category was invented for  
11      congressional scorekeeping systems.

12             There's an administration  
13      scorekeeping system which is separate and  
14      they don't have to meet.

15             It might help you to sort of  
16      think of it, if you think of it, just a  
17      congressional scorekeeping system, to  
18      control the actions of the Congress when it  
19      comes to spending, okay?

20             So the reason why them re-  
21      estimating the agriculture bill in the  
22      administration is a re-estimate is because

1       they called it that.

2                   But it really -- they chose to  
3       use it but in the Congress, they had to  
4       differentiate between bills that came up  
5       every year, appropriations bills, where you  
6       could always open up spending, because it  
7       just came up naturally, whereas permanent  
8       legislation, which is mandatory, because  
9       that was not reopened every year.

10                   So a lot of this stuff of  
11       mandatory and discretionary has to do with  
12       just arbitrary to some extent, but it was a  
13       system designed to sort of overlay control  
14       of what Congress does.

15                   So that has implications for who  
16       can move things when and where and who gets  
17       scored for it. The problem, I think, as I  
18       alluded to in my introductory comments, is  
19       that whatever Congress does, is going to be  
20       scored, because that's their scoring system.

21                   What the administration can do,  
22       they can do and it doesn't get scored by the

1 Congress necessarily. The problem is, I'm  
2 not quite sure, as Elgie mentioned, that  
3 doing something in the administration would  
4 necessarily affect what the Congress -- how  
5 the Congress interprets it.

6 We had Talmudic discussions in  
7 the budget committee and the CBO as to how  
8 things should score, and when I say  
9 Talmudic, I mean Talmudic, you know.

10 MEMBER SHARP: Isn't it true  
11 there's one other element that, while you  
12 talk about permanent legislation and the  
13 ability to get on an annual basis at the  
14 entitlements and other kinds of permanent,  
15 the fact is through reconciliation, that is  
16 the technique to try to, on an annual basis,  
17 affect these things so that the more things  
18 are open, then I think people generally  
19 think are, not that it's not hard and  
20 difficult, but the fact is everything is  
21 potentially subject to change.

22 DR. TELSON: Everything is



1       reachable. And for instance you could, in a  
2       budget resolution, take the stuff off-  
3       budget, just take the whole corpus.

4               The problem is that would have to  
5       show up in the budget resolution.

6               MEMBER PETERSON: I understand,  
7       but in the end, the fundamental problem is  
8       that there is an unambiguous contractual  
9       liability for \$23 billion, and those are in  
10       contracts that can't be changed through  
11       statute, and it is a real liability.

12              The problem is that the federal  
13       government is nowhere carrying it on their  
14       books and if the Securities and Exchange  
15       Commission were aware of this happening in  
16       the private sector --

17              DR. TELSON: There is only one  
18       problem, the Securities and Exchange  
19       Commission is controlled by the Congress.

20              MEMBER PETERSON: I understand,  
21       but -- so it is very convenient that this  
22       liability is being ignored, but it is a very

1 real liability. Congress cannot change these  
2 contracts and that money will in the end  
3 have to be spent for this purpose.

4 DR. TELSON: Professor Peterson,  
5 you are absolutely right and that comes in  
6 in a political argument, where you have to  
7 make the political argument to the Congress  
8 that look, even though the budget  
9 scorekeeping system shows this as a  
10 spending, it's not really because you forgot  
11 that there's this liability over here --

12 MEMBER PETERSON: Associated with  
13 these contracts.

14 DR. TELSON: But that's an  
15 argument that has to be made and has to be  
16 carried on the floor of the House and the  
17 Senate to be --

18 MEMBER PETERSON: I know what you  
19 are saying.

20 DR. TELSON: But that is what has  
21 to be done, otherwise the rules, you can't -  
22 - may be you could construct rules that

1 would include that, but it has to be very  
2 difficult to do.

3 I'm agreeing with the final  
4 result. I just don't know how to write rules  
5 that would apply broadly and permanently,  
6 that would allow for something like this.

7 MEMBER PETERSON: I understand.  
8 Thank you.

9 CHAIR SCOWCROFT: Al.

10 MEMBER CARNESALE: Thank you. I  
11 have two questions, both of which I ask to  
12 try and help put these figures in  
13 perspective, these enormous amounts of  
14 money.

15 The first is, somebody give me  
16 some ballpark comparison between the cost to  
17 the utility of fresh nuclear fuel and the  
18 cost to the utility of dealing with the  
19 spent nuclear fuel.

20 Are they comparable numbers? Are  
21 they -- is there an order-of-magnitude  
22 difference between them?

1 I'm trying to put these numbers  
2 that we are talking about for the spent  
3 nuclear fuel in some context, when we think  
4 of the cost of fuel, right?

5 Because there are two parts of  
6 the cost of fuel, getting the fresh fuel and  
7 doing something with the spent fuel. Does  
8 anybody have --

9 MR. COOK: I don't know the  
10 relative numbers. I do know that when you  
11 are purchasing fresh fuel, there is a  
12 competitive international market for that,  
13 and it's a one-time cost, where as there's  
14 not a competitive market in any sense for  
15 storage of the spent fuel and it's an  
16 ongoing, open-ended cost to the utilities.

17 Where those two lines cross, and  
18 where all of a sudden the carrying cost of  
19 the spent fuel exceeds what it costs to  
20 purchase that, I do not know.

21 MR. HOLSTEIN: I guess I would  
22 add to that, that in general, and this is

1       often cited as one of the benefits of  
2       nuclear power, fuel costs tend to be a  
3       fairly small percentage of the overall cost  
4       of the enterprise.

5                   MEMBER CARNESALE: I know that  
6       I'm trying to -- well, you understand what I  
7       am trying to compare. These are two parts of  
8       the cost of fuel and I am trying to figure  
9       out how do they compare, but okay, thank  
10      you.

11                  MEMBER PETERSON: Al, I could --  
12      it's about half a cent per kilowatt-hour is  
13      typical a cost for buying new fuel. The  
14      current fee is 0.1 cents per kilowatt-hour  
15      and because it hasn't been changed in  
16      forever, even adjusted for inflation,  
17      there's a misconception that it's actually  
18      permanently ---

19                  MEMBER CARNESALE: So, for once -  
20      - when the government takes it, there are  
21      costs to managing the spent fuel before  
22      that, right? So I am just trying to get a --

1                   Okay, well, but it's an  
2                   interesting number just to put things in  
3                   context. The other question again, is to --  
4                   when we talk about cost, the question is the  
5                   cost to whom, is a big part of this.

6                   So if I'm trying to look at this  
7                   from the point of view of U.S. citizens for  
8                   a moment, rather than simply whether they  
9                   are paying for it by paying higher taxes, or  
10                  whether they are paying for it by paying  
11                  higher utility rates, right?

12                 That matters, because it's not  
13                 the same group, although one could make an  
14                 argument, and certainly the advocates of  
15                 nuclear power would make an argument it  
16                 benefits the people of California if  
17                 Illinois burns -- rather, burns less coal  
18                 and uses nuclear power, just from climate  
19                 change and a whole bunch of other things  
20                 that turn out to be, but that's not the way  
21                 we work it.

22                 The way we work it, the people

1       that burn the coal don't pay for disposing  
2       of the spent nuclear fuel.

3               Now there are several things we  
4       could do, whether it's -- I understand the  
5       reasons for why the government should accept  
6       the fuel as soon as it can, whether it be  
7       credibility, decommissioned reactors or even  
8       operating reactors that have inadequate  
9       space.

10              But I am asking a question about  
11       the cost to American citizens. How much does  
12       it matter, if at all, whether the fuel is  
13       stored on site, is stored at a centralized  
14       facility or goes earlier to disposal, as far  
15       as the cost to our society, in dollars?

16              So putting aside for the moment  
17       who pays, which I understand if very  
18       important, but ultimately it's us and I'm  
19       like, does it make a big difference, or is  
20       it a little difference, or -- how much of  
21       this a dispute between the parties, and how  
22       much of this is the cost to the citizens of

1 the United States?

2 MR. COOK: Let me take a shot at  
3 that, sir, and to your rhetorical question  
4 of who pays, the taxpayer or the ratepayers,  
5 the sad answer is both.

6 As Michael Hertz explained, the  
7 ratepayers are paying into the nuclear waste  
8 fund but we are not using that, by court  
9 decision, to pay for the cost of storage at  
10 reactor sites.

11 That's paid out of the Judgment  
12 Fund, which comes from the general  
13 taxpayers.

14 A little history here: back in  
15 the previous decade, particularly after  
16 9/11, we thought one of the drivers for  
17 moving forward with Yucca and moving spent  
18 fuel off-of the reactor sites, was going to  
19 be the safety and security concerns.

20 In an ideal world, nobody would  
21 be storing this stuff near major urban  
22 centers. Over time, that, and particularly



1 with some of the NRC decisions on the longer  
2 term safety of on-site dry cask storage, and  
3 the more recent NRC decisions that they  
4 could do the waste confidence determination  
5 for new reactors, that concern seems to have  
6 gone to the back burner a bit.

7 I think the two drivers now, to  
8 the extent that there is still pushing to a  
9 solution, have to be this mounting, open-  
10 ended, enormous liability that Michael Hertz  
11 described.

12 If people wake up to that, and  
13 realize that's hidden in the federal budget,  
14 but it's very real nonetheless, I think that  
15 needs to push to a solution for the  
16 commercial spent fuel.

17 For the government spent fuel and  
18 high-level waste, there's other, either  
19 regulatory or settlement drivers that for a  
20 number of sites, that material has to go  
21 off-site.

22 In the case of Idaho, there's

1        dates out in the 2030 time frame when the  
2        Navy spent fuel has to move. In the case of  
3        a big site like Hanford, there's a tri-party  
4        agreement that drives when that has to move,  
5        and there's financial penalties if it  
6        doesn't.

7                    So, I think we have shifted the  
8        debate from it being somewhat of a safety  
9        and security concern, to really being a  
10       financial concern now.

11                   But all the cards haven't been  
12       put on the table for the decisionmakers to  
13       understand the real cost of leaving it -- of  
14       status quo.

15                   MR. HEZIR: If I could just add  
16       to what Kevin just said, right now, citizens  
17       are paying twice. The consumer -- the  
18       nuclear energy consumer pays the fee that  
19       goes into the fund, but because of the fact  
20       that the government has not performed and  
21       because of the court case and the  
22       litigation, the general taxpayer is now

1       paying for the cost of the settlements.

2               So, there's -- in effect, and  
3       again while you can't see it, given the way  
4       the budget accounting is done, the average  
5       citizen is paying twice.

6               And so if we were to move to a  
7       system where there was clearly a program and  
8       a path forward, whether it be to centralized  
9       interim storage or to some other, ultimate  
10      final form, that could be paid for out of  
11      the waste fund, there would actually be a  
12      savings to the average citizen, because we  
13      could then extinguish the litigation and  
14      bring these settlements to a close.

15              MR. HOLSTEIN: I would just add  
16      that at first glance, it may seem that if  
17      you created some sort of centralized  
18      storage, that there would be cost savings.

19              And I'm not sure that that  
20      assumption holds up very well for at least  
21      two reasons. One is that utilities have to -  
22      - if they have operating nuclear plants, and

1 even if some cases, if they are no longer  
2 operating, utilities do have to manage on-  
3 site spent fuel and maintain the facilities,  
4 personnel, equipment, to -- and the security  
5 to do all of that.

6 And that would be true even if we  
7 had an operating, permanent disposal site  
8 today. It just wouldn't be as much waste.

9 Secondly, if the policy choice  
10 ends up being the construction of one or  
11 more centralized, interim storage  
12 facilities, you have to factor into the cost  
13 structure the amount of time that would be  
14 taken by the siting decisions, because  
15 monitored retrievable storage sites have  
16 been proposed and debated in Congress in the  
17 past.

18 And indeed, there was a so-called  
19 MRS Commission that reported back to  
20 Congress in the 1980s and suggested the  
21 construction of two or three regionally-  
22 sited facilities.

1                   This was not well received in  
2 Congress and it was not well received in the  
3 regions, and some people have suggested that  
4 the political and public obstacles  
5 associated with siting a permanent  
6 repository are not that much different when  
7 you are turning around and trying to site  
8 one or more regional interim storage  
9 facilities.

10                   It's been suggested however that  
11 on-site storage does not face similar kinds  
12 of public and political opposition, simply  
13 because those facilities have been operating  
14 for a period of time.

15                   So I would just caution against  
16 assuming that there are -- that there's a  
17 straight line path of cost savings as you  
18 become more and more centralized in your  
19 solutions.

20                   MR. COOK: And in fact, we posed  
21 that very question that you posed to the  
22 Department of Energy back around the 2006,

1       2007 time frame, where our frustration was  
2       that Yucca always seemed to recede off into  
3       the distance, and were thinking that interim  
4       storage would provide a way to start to  
5       truncate that mounting liability.

6               Part of the Department's answer  
7       was just what Elgie said, that by the time  
8       you factor in the time to site a new  
9       facility, and get it licensed, you are not  
10      ahead of the game.

11              But the other argument they  
12      offered is the added transportation cost. In  
13      their view, their ideal solution was one-  
14      time transportation from the utilities site  
15      out to Yucca Mountain.

16              And adding interim storage as a  
17      middle step added up that transportation  
18      cost and whatever risks you might believe  
19      are associated with that transportation.

20              MEMBER CARNESALE: Just to  
21      follow-up on that briefly, this is very  
22      helpful and I really do -- but these are

1       hypotheticals, right? They aren't ones that  
2       have direct answers.

3               Things might look a little  
4       different -- I wasn't the one that said  
5       centralized storage was cheaper, but it may  
6       be necessary for other reasons.

7               But the point I did want to get  
8       to was it is one thing, when it was assumed  
9       that Yucca might be delayed some. It's  
10      another thing if we assume Yucca is not  
11      going to happen, right?

12              In which case, now when you talk  
13      about how much capacity is there at existing  
14      reactor sites which are going to be 60 years  
15      instead of 40 of operation, and  
16      decommissioned reactors, there may be new  
17      arguments for centralized storage as being  
18      necessary.

19              And so you could still do an  
20      economic analysis of it, but you may have to  
21      move some spent fuel around. There is an  
22      argument, whether you have to move it to a

1 centralized facility or not is a different -  
2 -

3 But stretching that out by 20 --  
4 operations out by 20 years and looking for a  
5 new site for disposal, may make the time  
6 scale such that, I'm sorry, you are going to  
7 have to move some fuel twice.

8 MEMBER BAILEY: Okay, I am trying  
9 to still not be depressed by what I am  
10 hearing. I am trying to figure out how we go  
11 forward here. And I appreciate hearing about  
12 the previous studies and what have you.

13 But just let me explore a few  
14 questions here and get some specific  
15 answers.

16 I think, Kevin, you mentioned  
17 slightly, something about maybe defense  
18 waste and other areas where there are  
19 similar issues, and I guess my question goes  
20 to, you know, looking at commercial waste,  
21 on the defense side, what are some of the  
22 issues, contractual issues and obligations



1 of the federal government on that side, for  
2 instance, the contractual commitments to  
3 Idaho and that kind of thing?

4 MR. COOK: The -- as I understand  
5 it, the commitments with Idaho are part of a  
6 settlement agreement that was reached with  
7 the former governor then, and so they are  
8 not contractual per se, they are more in the  
9 case of a judicially-enforced settlement  
10 agreement.

11 Not if I -- one way or another if  
12 I'm wrong, Michael. And the big issue with  
13 Idaho is that's the nation's sole storage  
14 place for spent Navy fuel, and that  
15 agreement requires that -- in fact there's  
16 an issue in the news just recently because  
17 Idaho wants to take some small quantities of  
18 spent fuel into the laboratory for research  
19 purposes, to get smarter on these separation  
20 reprocessing issues.

21 And that bumps up against the old  
22 agreement which says you can't bring

1 anything into the state until you start  
2 shipping this spent fuel out, and the  
3 deadlines are in the mid-2030s.

4 As I mentioned, some of the  
5 clean-up sites, Idaho's is a clean-up site,  
6 but the two biggest ones are Hanford out in  
7 Washington state and Savannah River down in  
8 South Carolina.

9 They are in the process of taking  
10 liquefied, high-level waste, typically  
11 stored in large, stainless steel tanks. Over  
12 the years there's been leakage problems,  
13 there's been issues with contamination of  
14 groundwater. There's been build-up of some  
15 gases in those tanks.

16 So both sites are in the process  
17 of trying to stabilize those -- liquid  
18 waste, in the next couple decades, start  
19 vitrifying it, as was discussed yesterday.

20 Instead of it being liquid  
21 radioactive waste, you'll have a very long-  
22 term, stable, glass log, but it is still

1 high-level waste.

2 But both of those sites, the  
3 federal regulators, the state regulators  
4 view that vitrification as just an interim  
5 step. It's not meant to -- as stable as  
6 those logs will be, it's not meant to stay  
7 at those sites. It was meant to go to Yucca.

8 And so with Yucca off the table,  
9 you will start to see a lot of  
10 back-pressure, if you will, from those  
11 regulators and from those congressional  
12 delegations, saying we still want to proceed  
13 with cleaning up the site, we want to  
14 proceed with vitrification, but I need that  
15 end goal. I need to know that it's got a  
16 place to go so it will leave my state, and  
17 the administration, it doesn't have a way to  
18 promise that result right now.

19 So there's a driver there in the  
20 sense that there's political and regulatory  
21 pressure to have an end-state disposal  
22 option for those materials.

1           It's not like you need that  
2       disposal option in 2012, but probably  
3       starting 2030 time frame, it needs to be up  
4       and accepting.

5           We had always been told, and I  
6       don't have any reason to think this was  
7       wrong advice from DOE, that both the Navy's  
8       spent fuel, and those various categories of  
9       high-level waste, were not suitable for  
10      reprocessing, that either for classification  
11      reasons, or the chemical composition of  
12      them, that was not nearly as feasible as it  
13      would be for regular commercial spent fuel,  
14      which is far more standardized, doesn't have  
15      all these other contaminants, it is in a  
16      pretty understandable form.

17          So, most of the folks that we  
18      dealt with when I was back in Congress,  
19      thought that regardless of what happened  
20      with the commercial spent fuel, the Navy  
21      spent fuel and the high-level waste that the  
22      government owned, had to be on a track for

1 permanent disposal.

2 There wasn't a whole lot of  
3 interim things you could do with it. And --

4 MEMBER BAILEY: Are there  
5 estimates of the cost for having not  
6 disposed of it?

7 MR. COOK: Well, there's two I'm  
8 aware of. One is -- one of my colleagues on  
9 the panel mentioned that DOE had done a  
10 financial statement, where they reflect the  
11 liability for the commercial spent fuel. I  
12 think Michael Hertz said that is on the  
13 order of 16 billion.

14 Their estimate for the  
15 government-owned spent fuel and high-level  
16 waste was very similar. I think it was 15  
17 billion.

18 The other data point I can offer  
19 is this -- as I said, we were frustrated  
20 every year where Yucca seemed to recede into  
21 the future, and we asked DOE for the record,  
22 what were the costs of those delays?

1                   And the answer we got back, and  
2                   for several years running they said this was  
3                   still the right answer, is for every year of  
4                   delay, it costs roughly half a billion  
5                   dollars in added liability for the  
6                   commercial spent fuel.

7                   MEMBER BAILEY:   Half a billion?

8                   MR. COOK:   Half a billion, and  
9                   roughly half a billion for the delay in not  
10                  having an option to dispose of the  
11                  government-owned spent fuel and high-level  
12                  waste.

13                  Now that was an answer offered by  
14                  the administration that was still trying to  
15                  get Yucca to the goal line. I don't know  
16                  that this current administration would give  
17                  you the same answer, but that's the only  
18                  data point I have.

19                  MEMBER BAILEY:   Okay. Any other  
20                  thoughts?

21                  (No response.)

22                  MEMBER BAILEY:   Okay. Moving to

1 another area, and help me understand this,  
2 the whole budget scoring and PAYGO issue. If  
3 we are looking at a Fed Corp, and you may  
4 have answered this in the context of your  
5 discussion, but I just want to hear it more  
6 specifically, how does that impact my  
7 wanting to transfer funds to Fed Corp?

8 DR. TELSON: It's actually -- it  
9 could be a very complicated answer but to  
10 the first order, if you swept -- if you did  
11 it in the most straightforwardly direct way,  
12 you would be taking the 24 billion corpus  
13 off-budget, right, and making it available,  
14 you would be scored for that 24 billion,  
15 plus the 750 million a year receipts, okay?

16 So it could be a very, very big  
17 score. But once you started really going  
18 down that way, you'd explore ways of  
19 reducing that score by leaving stuff on for  
20 a number of years, hopefully, if the rules -  
21 - the rules at one point allowed things that  
22 happened 10 years later not to be scored,

1       okay?

2                   MEMBER BAILEY:   So does it become  
3       an asset of the Fed Corp, I guess that's  
4       what I'm trying to understand?

5                   DR. TELSON:   Correct --

6                   MEMBER BAILEY:   It does.

7                   DR. TELSON:   but if the Fed Corp  
8       is off-budget, then by definition, if you  
9       think of it, you are taking it -- you know,  
10      think of a membrane, you know, you are  
11      taking stuff from the federal government,  
12      and you are taking it out. So you are scored  
13      for taking the \$24 billion out.

14                  MEMBER BAILEY:   Out.

15                  DR. TELSON:   You know, that's the  
16      "cost," however, of doing it this way.

17                  MEMBER BAILEY:   Go ahead.

18                  MR. HOLSTEIN:   However, I would  
19      suggest, all other things being equal, the  
20      costs of a Fed Corp increase relative to the  
21      costs of keeping the program under the  
22      Department of Energy, and the reason for



1       that is because the Department historically  
2       provides lots of services in support of the  
3       nuclear waste management functions,  
4       budgetary and management support, that would  
5       have to be added in to the calculation.

6               Now, long-term, those are  
7       probably not deal-breaker differences, but  
8       they are not -- you shouldn't think of it as  
9       simply transferring one to the other and  
10      having the costs remain static. You would  
11      have to --

12             MEMBER BAILEY:  It's not that  
13      simple.

14             MR. HOLSTEIN:  you would have to  
15      stand up the various administrative and  
16      managerial budgetary functions of a Fed Corp  
17      that are currently provided by the  
18      Department.

19             And the second thing I would  
20      mention, and this is sort of a nightmare  
21      scenario, but I think it needs to be  
22      mentioned, which is that not all -- taking

1 things off-budget hasn't always worked as  
2 smoothly as people had hoped, even in a  
3 budgetary sense.

4 So I return to my earlier  
5 reference to the Highway Trust Fund. The  
6 Highway Trust Fund was thought to have been  
7 well funded, adequately funded for many  
8 decades to come, and it no longer is.

9 It no longer is able, through the  
10 funds that it receives through gasoline  
11 taxes, and the reason for that -- to pay its  
12 obligations.

13 And so -- and the reason for that  
14 of course is because gasoline sales have  
15 been declining for a variety of reasons, and  
16 so the revenues have declined and it has  
17 forced the program to come back to Congress  
18 in search of supplemental funds.

19 And so they have ended up in the  
20 situation where they have got some of their  
21 budget off-budget, and some of their budget  
22 on-budget, and so that creates some

1 interesting politics as well as budgeting.

2 MEMBER BAILEY: Michael.

3 MR. HERTZ: I guess I would say  
4 with regard to federal corporation, in terms  
5 of transferring assets, one thing we also  
6 need to think about the liabilities -- it  
7 would then be liable for actually  
8 constructing whatever is going to be  
9 constructed -- but also the litigation  
10 liabilities, what would you do with those?

11 Would they also be transferred to  
12 the federal corporation or would the United  
13 States retain those?

14 MEMBER BAILEY: Oh, I hadn't  
15 thought about that. So you --

16 MEMBER DOMENICI: What kind of  
17 liabilities?

18 MEMBER BAILEY: Litigation.

19 MR. HERTZ: The litigation of a  
20 breach of contract liabilities.

21 MEMBER BAILEY: The breach of  
22 contract issues. Does that transfer to the

1 Fed Corp?

2 DR. TELSON: It depends on the  
3 statute.

4 MR. HERTZ: Right, I mean, it  
5 depends on the statute, right. You know,  
6 right now, that is -- you talk about off-  
7 budget, this is the ultimate off-budget  
8 expense because it is coming out of the  
9 Judgment Fund, which is an indefinite  
10 appropriation, and Congress -- year-to-year,  
11 indefinite appropriation, Congress doesn't  
12 look at it, the Department of Energy, you  
13 know, doesn't pay it.

14 It's a judgment gets entered, or  
15 a settlement gets entered, and it gets paid  
16 by certification of the Attorney General.  
17 And none of those funds -- you know, to the  
18 extent that those funds are essentially  
19 being used as a substitute for paying for  
20 storage, which is what the lawsuits are all  
21 about, paying for that storage so the  
22 utilities wouldn't have had to pay if the

1 Department of Energy had performed when it  
2 was supposed to have -- begun performing  
3 when it was supposed to, essentially you  
4 have the judgement paying those storage  
5 costs. It's shipped to the taxpayer in that  
6 situation rather than the rate payer.

7 MEMBER EISENHOWER: I would like  
8 to just jump in here because I wanted to ask  
9 a question a while back. I mean, the past is  
10 the past. There is nothing we can do about  
11 the past.

12 Does it may any sense -- I mean,  
13 is it legally possible or feasible within  
14 this very complicated and arcane budgeting  
15 system, to put a firewall on the past, say  
16 all right federal government, you can keep  
17 your \$23 billion and the liabilities, and  
18 you are going to have to clean that up in  
19 your own way.

20 Now we are starting at Fed Corp  
21 and every future source of revenue that  
22 comes from the utilities goes in there, and

1       you start a clean deal.

2                   I wouldn't want to be on the  
3       Board of Directors. I wouldn't want to  
4       accept that \$23 billion if I were on the  
5       Board of Directors because of the open-ended  
6       nature of the liability.

7                   So could you speak, maybe, that  
8       your panel could speak to the feasibility  
9       of, you know, shrink-wrapping this problem  
10      and leaving it where it emanated, and then I  
11      have another quick question after that.

12                  MR. HEZIR: Let me start off, and  
13      I'm sure my --

14                  MEMBER BAILEY: Go ahead, no, go  
15      ahead, it's on this point. Please, please,  
16      let Commissioner Eisenhower go ahead. I'll  
17      come back.

18                  MR. HEZIR: If I could, I think I  
19      can address both your questions, at least  
20      I'll start off and let my colleagues add to  
21      it. But the simple answer to your question  
22      is that if you are writing legislation, you

1 are starting with a blank piece of paper.

2 So if one wanted to construct a  
3 regime where you were to separate past  
4 liability from future, you know, there is no  
5 reason why you could not do that.

6 I mean, I don't know exactly how  
7 it would work. People would have to think  
8 about it. But conceptually, it could be  
9 done.

10 But I do want to go back to this  
11 point about the scoring and the Fed Corp.  
12 and again, I am saying this without being an  
13 advocate or an opponent of the Fed Corp.

14 But let me preface what I am  
15 going to say by saying one thing, that my  
16 experience with budget score keeping, it  
17 tends to be as much of an art as it is a  
18 science.

19 And with all due respect to my  
20 colleagues here, I am going to disagree with  
21 both Mike Telson and Elgie Holstein and say  
22 that if you were to set up a Fed Corp and if

1       it was a corporation that is wholly-owned by  
2       the federal government, that is not off-  
3       budget.

4               And so by putting the waste fund  
5       in the Fed Corp, that is not a scoring  
6       event. It's -- you know, it's almost like  
7       moving -- you are just moving something  
8       around within the federal establishment. You  
9       are not moving it outside the government.

10              What really triggers the scoring  
11       is the rate of spending. In other words,  
12       depending upon what level of activity that  
13       corporation is authorized to engage in, that  
14       spending rate then triggers the spending if  
15       -- triggers the scoring, assuming that that  
16       spending is not subject to appropriations.

17              And so that's really where the  
18       scoring issue lies.

19              MR. HERTZ: Can I just make one  
20       comment about legislation writing on a clean  
21       slate, and I purport to know nothing about  
22       scoring, and as far as the -- the courts



1 don't care about scoring. I can tell you  
2 that.

3 They care about what the contract  
4 says and whether the government is in  
5 breach.

6 Legislation can cause the  
7 government to breach a contract. Legislation  
8 can cause the government to have effected a  
9 taking.

10 There can be -- so in terms of  
11 writing on a clean slate, yes, you can write  
12 on a clean slate, but you may be imposing  
13 new liabilities.

14 And we have the whole example of  
15 the Winstar cases, Savings and Loan crisis  
16 of the '80s, where Congress decided to,  
17 quote, write on a new slate, do something  
18 about you know, not allowing goodwill to be  
19 counted as capital, and many millions of  
20 dollars later, we are finally concluding the  
21 litigation of those cases.

22 So that is not an absolute

1       answer. You have to -- and what the  
2       utilities would accept, you know, I think  
3       all these things, in terms of whether it's  
4       interim storage, or whether it's adjustment  
5       of the fee, or whether it's timing of the  
6       fee, I don't think any of those things can  
7       be divorced from the liabilities.

8               I think it has to be done as a  
9       package, and you know, some things can be  
10      done by regulation. Some things legislation  
11      has to be changed for.

12             But for almost all those things,  
13      the best thing to do would be essentially to  
14      have agreement with utilities and actually  
15      have an amendment to the contract on some of  
16      these things to avoid the liabilities that  
17      you are talking -- the Board of Directors  
18      you don't want to be on.

19             CHAIR SCOWCROFT:  Are you --

20             MEMBER BAILEY:  All right, okay.  
21      Going back to this -- there was a question  
22      that Per had asked about central and interim

1 storage and I want to make sure I am clear.

2 Can the nuclear waste fund, can  
3 it be used to support central interim  
4 storage? Can it be used to support  
5 transportation? Can it be used to support  
6 other types of -

7 DR. TELSON: Not, not --

8 MEMBER BAILEY: technologies?

9 DR. TELSON: Not directly, okay?

10 MEMBER BAILEY: Not directly.

11 DR. TELSON: But if -- but as  
12 Kevin Cook had indicated, if you lower  
13 spending on the nuclear waste fund -- on the  
14 nuclear waste project, okay, it opens up  
15 space within that 302(b), within that  
16 allocation that they have to spend it on  
17 something else.

18 Or at DOE, if we cut the spending  
19 on the nuclear waste fund, on OCRW - you  
20 know, the office, it opened up more space  
21 for us to be able to spend it on something  
22 else.

1                   But you can't really spend the  
2                   money in the waste fund somewhere else.

3                   MEMBER PETERSON: I think that's  
4                   a contract question. Maybe --

5                   MEMBER BAILEY: Go ahead.

6                   DR. TELSON: I'm sorry, I think  
7                   Vicky meant something quite different. What  
8                   is the fee eligible to cover on the nuclear  
9                   waste system? Does it include --

10                  MEMBER BAILEY: Right.

11                  DR. TELSON: transportation of  
12                  nuclear waste? Does it include --

13                  CHAIR SCOWCROFT: Oh, I'm sorry.

14                  MEMBER PETERSON: Under the  
15                  contracts, you can use fee revenues to pay  
16                  for centralized storage in the end. But on-  
17                  site, the courts have determined you can't  
18                  do that unless, of course, utilities would  
19                  elect to you know, amend the contract such  
20                  that it would be acceptable.

21                  MR. HERTZ: Right, to the extent  
22                  that there was a case at one point where the

1 Department of Energy attempted to settle  
2 with the utility, to essentially pay for the  
3 damages, i.e. pay for the on-site storage,  
4 the court said no, you couldn't take that  
5 out of the nuclear waste fund.

6 Now you could change that by  
7 legislation.

8 MEMBER PETERSON: No, you can't.  
9 You can't change the contracts by  
10 legislation, but you could --

11 MR. HERTZ: No, but you could  
12 change the use of the fund to allow -- to  
13 allow the fund to -- the judgement fund for  
14 example -- to pay those settlements.

15 MEMBER PETERSON: But the  
16 contracts also contain the same language, so  
17 I think you can't change -- the contracts  
18 prescribe --

19 MR. HERTZ: I don't know that the  
20 contracts are that specific with regard to  
21 the use of the nuclear waste fund.

22 MEMBER PETERSON: I would be

1       pretty sure that Congress could not, through  
2       legislation, fix this taxpayer problem by  
3       allowing the use of the funds for on-site  
4       storage.

5               This is an important point.

6               MR. HERTZ:  And we could take  
7       another look at it, but I think we have  
8       always been on the assumption that that is  
9       one thing that Congress could change.

10              MEMBER PETERSON:  Looking the  
11       contracts --

12              CHAIR SCOWCROFT:  Look, anything  
13       going forward it can change, so any  
14       collection of next year's fee, if Congress  
15       said next year's fee shall cover x, it can  
16       cover x, that's --

17              MEMBER PETERSON:  No, no, no, no.  
18       The contracts specify also what the fee  
19       revenues can be used for and I think that  
20       the contracts are linked to the original  
21       statute, so changing the statute doesn't  
22       change what the contracts are linked to.

1                   MR. HERTZ: I would have to go  
2 look at the contract, but my recollection of  
3 the Alabama Power, which was the case that  
4 decided the fund couldn't be sued to pay  
5 those settlements, was essentially a  
6 statutory interpretation case.

7                   They interpreted the statute as  
8 it existed. The fund couldn't be used to pay  
9 those settlement costs. I have always been  
10 working on the assumption that Congress  
11 could in fact change that.

12                  I have to go look and see if  
13 there is actually anything in the contract  
14 that would prohibit that. I don't --

15                  MEMBER PETERSON: I think it's  
16 worthwhile, because in discussing what at  
17 least the industry position, I think, is the  
18 centralized storage, yes, interim storage  
19 on-site, never, no matter what Congress  
20 does.

21                  MR. HERTZ: No, that may well be  
22 -- well, that may well be true, but the use

1 of the fund, I think, is dictated by  
2 statute, what the fund can be used for. We  
3 can probably get you something --

4 MEMBER BAILEY: Can I -- can I go  
5 back to --

6 MEMBER PETERSON: This is  
7 important. If we could get some feedback on  
8 this question, --

9 MEMBER BAILEY: I am glad I am  
10 asking questions that are invigorating.

11 CHAIR SCOWCROFT: On this  
12 particular point?

13 MEMBER DOMENICI: On this point,  
14 I just wanted to say that Ms. Bailey had the  
15 floor and --

16 MEMBER BAILEY: That's okay.

17 MEMBER DOMENICI: the  
18 distinguished co-chairman of mine over there  
19 has had the floor for an hour on his own,  
20 and it would seem like you ought to let her  
21 go and let him wait, otherwise people like  
22 me will go out for lunch and we'll never get



1 a chance to talk.

2 MEMBER BAILEY: I am really okay.

3 MEMBER DOMENICI: Can we wait  
4 until the next round for the questions. He's  
5 a very, very amiable guy, I don't know why  
6 he is dean over there in the --

7 MEMBER PETERSON: I apologize,  
8 Senator. University professors are  
9 incorrigible.

10 MEMBER BAILEY: Now wait a  
11 minute. Okay, I really just have two more  
12 areas. Thank you. On the adequacy of the fee  
13 paid, and you said that is governed by  
14 statute, you are telling me that the  
15 Secretary of Energy cannot reduce that fee  
16 and the Secretary of Energy cannot suspend  
17 that fee unless there's a change in statute  
18 or does the statute allow for that?

19 MEMBER DOMENICI: That's a good  
20 question.

21 MR. HEZIR: I'll start off. The  
22 fee set by statute at one mil, the statute

1       also has a procedure in it for the Secretary  
2       to make what's called a fee-adequacy  
3       determination, which is whether or not the  
4       one mil is adequate to meet total life cycle  
5       costs of the program, which today, we don't  
6       know what that number is.

7               If the Secretary determined that  
8       the current fee was either too high or too  
9       low, that the Secretary could make that  
10      finding but to change to that fee would  
11      require then legislation.

12             The point I was making earlier I  
13      think in response to the question by Per  
14      Peterson was that, while the fee level, I  
15      think, can only be changed by legislation,  
16      the terms and conditions, the timing of when  
17      the fee is paid, can be set by the  
18      Secretary.

19             So if, let's say that the  
20      Secretary determined that one mil is  
21      necessary to meet the total life cycle cost  
22      of the program over 100 years, then the fee

1 would stay at one mil.

2 But if the Secretary then said --  
3 and again this would have to be by  
4 regulation, with the consent on the  
5 contracts, that well, we don't need to have  
6 all of that paid this year, that some of  
7 that could be paid in a future year, so long  
8 as it was properly accounted for, accrued  
9 and paid with interest, I think that could  
10 be done administratively but that would take  
11 a change in regulation and would also  
12 require an amendment to the standard  
13 contracts, and a contract, being an  
14 agreement between two parties, would require  
15 mutual consent.

16 So the utilities would have to  
17 agree to it as well, but it could be  
18 potentially offered by the Department.

19 MEMBER BAILEY: Okay, and then  
20 another non-controversial point, this \$24  
21 billion, this liability. I think, Kevin, you  
22 said it's invisible.

1                   There are some of us who think  
2                   that it's so invisible that it's gone, and  
3                   that probably David Copperfield cannot bring  
4                   it back.

5                   In other words, you know, this is  
6                   a sore point for states, this is an issue as  
7                   it relates to integrity and trust and  
8                   confidence.

9                   How -- what recommendation, what  
10                  could this Commission possibly recommend  
11                  that would change that perception or that  
12                  presumption, I mean, how do I get that  
13                  money? What do I do?

14                  How is that on the books and I  
15                  guess from the standpoint of, you know, you  
16                  talked earlier about disappointment in DOE,  
17                  you know, DOE and all the agencies are  
18                  creatures of Congress.

19                  Help me understand your  
20                  disappointment in DOE and why I shouldn't be  
21                  so disappointed in Congress and I can't find  
22                  this money, so --

1                   MR. COOK: I think there's two  
2 reasons for that comment I made and that  
3 reaction we had. And one is, as I said  
4 earlier, the funding asset, the annual  
5 revenues that come into the nuclear waste  
6 fund, what's built up in terms of principle  
7 and the interest on that principle, you are  
8 getting 750 million, roughly, a year into  
9 the system, and you have principle and  
10 interest in the nuclear waste fund of  
11 roughly 27 billion.

12                   Right now, for a lot of people,  
13 that appears to be free-floating money in  
14 the federal books, as an asset, because it  
15 is decoupled from that liability, as a  
16 consequence of how the justice department, I  
17 think, litigates the cases, and particularly  
18 the other decouple is while the Department  
19 of Energy had responsible for the nuclear  
20 waste depository, and getting the solution  
21 built, they were not the ones paying the  
22 price of the delay. That was coming out of

1 the judgement fund.

2 MEMBER BAILEY: It becomes almost  
3 a shell game. It becomes an --

4 MR. COOK: It is.

5 MEMBER BAILEY: we talked about  
6 double jeopardy over here. That's all  
7 Congress-speak; that's wonderful. But --

8 MR. COOK: No, I think you are  
9 absolutely accurate. It -- honesty in  
10 budgeting would say that we are explicit  
11 about that liability, we are explicit about  
12 how we pay the judgement fund.

13 That is something that this is --  
14 I hate to hit you with more budget-speak,  
15 but that is funding out of something called  
16 a permanent indefinite appropriation.

17 It means that when the judgement  
18 fund owes a payment as a result of a  
19 litigation or settlement, that's just paid.  
20 You get out the checkbook.

21 It's not like there is a  
22 conscious funding decision that in a given

1       year, we are going to appropriate x dollars  
2       to the judgement fund and that is all we can  
3       afford to pay.

4                You have a very challenging time  
5       right now because of all the attention on  
6       fiscal responsibility, and I think as Mike  
7       was trying to tell the Commission, however  
8       clever we get with scoring, it's a pretty  
9       huge hurdle at this time in our politics  
10      because of all the attention on the deficit.

11               On the other hand, that might  
12      also be a window of opportunity for truth in  
13      budgeting to win out, and say, let's be  
14      candid about what we have available to solve  
15      a problem, and what are the liabilities that  
16      drive us to that solution.

17               And until those are coupled  
18      together, I think you have a really hard  
19      time -- again, back to however intelligent  
20      your comprehensive solution is, I think you  
21      have a really hard time bringing forward the  
22      financing end of that solution until all

1       those cards are on the table openly.

2                   DR. TELSON:   Just to follow up, I  
3       think, just the Commission could, by setting  
4       this picture forth accurately and  
5       dispassionately, make the case that this  
6       isn't adding up, that there's all this stuff  
7       going on and if for no other reason, you  
8       have this long-run liability, number one,  
9       and number two the judgement fund is just  
10      bleeding over this stuff.

11                   So under a normal score keeping  
12      system you would be able to at least, if a  
13      new statute would sort of take care of the  
14      bleeding in the judgement fund, at least  
15      killing that an off-set, okay?

16                   But at least you are setting the  
17      story out well that the panel is  
18      recommending, I think would start the  
19      process. Then you have a political problem  
20      but okay, that's what the Congress is for.

21                   MEMBER BAILEY:   Thank you.

22                   CHAIR HAMILTON:   Mr. Chairman,



1       this is Lee Hamilton. May I get on the  
2       agenda at some point?

3               CHAIR SCOWCROFT:  Yes, Lee, you  
4       can, but coping with this arcane world is  
5       intellectually stressing and I am going to  
6       declare a break until 10:40. Thank you.

7               (Whereupon the above-entitled  
8       matter went off the record at 10:22 a.m. and  
9       resumed at 10:34 a.m.)

10              CHAIR SCOWCROFT:  All right,  
11       well, let's plow ahead. Allison, you are  
12       next up.

13              MEMBER MACFARLANE:  Okay, thank  
14       you very much Mr. Chairman. All right. So I  
15       want to go back to Susan Eisenhower's  
16       question, which was my question too and I am  
17       happy to deal with the technical issues.  
18       That's really easy for me and the social  
19       theory, that's great.

20              The legal stuff is very, very  
21       confusing. I'm a geologist without a law  
22       degree. So I want to try to understand this

1       -- I want to understand what we can do more.

2                   And so I want your advice on  
3       that. I do clearly get the double jeopardy  
4       issue, and it seems to me that if you say  
5       the fee isn't adequate to really cover all  
6       the liabilities that exist now, and then you  
7       go back to the utilities to increase the  
8       fee, then your utilities are paying for --  
9       basically lawyers are getting rich and  
10      nobody is really better off, as far as can  
11      tell. That seems to be the bottom line.

12                  So what I want to try to  
13      understand is what we can do to deal with  
14      the liability problem and what we can do to  
15      deal with this \$24 billion that maybe we  
16      can't do anything about.

17                  So I want you guys to tell me  
18      what you think, in your best judgement, is a  
19      good solution. Do we need a new entity? Do  
20      we keep it in DOE?

21                  I understand there are -- you  
22      know you have done a great job at

1 highlighting a lot of the outstanding  
2 issues, but now I want your advice on what  
3 you think that we should do, in your best  
4 judgement, in terms of dealing with these,  
5 especially the liability issues.

6 And Michael, feel free to start.

7 MR. HERTZ: All right. I am not  
8 sure I can actually make a recommendation on  
9 what you can do in terms -- you know, I mean  
10 the Commission is going to make  
11 recommendations. The administration is going  
12 to review them.

13 I can't really -- I am not really  
14 in a position to propose certain things. I  
15 mean, I think -- but a couple of things I  
16 can say.

17 We had these contracts. We have  
18 been found to be in partial breach of these  
19 contracts. Certain liabilities flow from  
20 that, and when I talk about liabilities, I  
21 think you need to sort of separate two  
22 separate kinds of liability.

1           One is the liability, quote, I  
2       guess of the fund, if you want to call it,  
3       to actually build a repository, which is  
4       what the fee was supposed to be doing.

5           And then the second thing is the  
6       liability that we are having -- being  
7       imposed on the United States because the  
8       Department of Energy hasn't picked up the --

9           MEMBER MACFARLANE: That's the  
10      one I'm talking about.

11          MR. HERTZ: Okay. And you know,  
12      there may be things -- you know, I mean,  
13      with agreement of the utilities, you can do,  
14      presumably anything, okay.

15          MEMBER MACFARLANE: Right.

16          MR. HERTZ: So that's -- and what  
17      they'd be willing to agree to, what they  
18      won't be. What you might be able to do -- I  
19      guess a couple of things to take into  
20      account.

21          Somebody reminded me during the  
22      break, we have been sued for the storage

1 costs that the utilities had to build on-  
2 site because the Department of Energy hadn't  
3 picked up the spent nuclear fuel.

4 In a sense, we have already paid  
5 a lot of money for the capital expenditures  
6 that need to be made to store this stuff on-  
7 site.

8 MEMBER MACFARLANE: That's right.  
9 That money has already been spent. The pads  
10 have been built, the asks have been bought,  
11 so that money is sunk already.

12 MR. HERTZ: Right. And you know,  
13 I take it at least one potential solution  
14 would be, and I'm not advocating it, I don't  
15 purport to get into the policy, I'm just  
16 trying to deal with the legal side of this.

17 You know, having spent that  
18 money, you might choose to store it on-site.  
19 You might, for example, and the Department  
20 of Energy could meet its contractual  
21 requirements I suppose, if it took title to  
22 the stuff on-site, and if it took title to

1       the land where it is actually sitting, so  
2       that you won't be sitting on something --  
3       you wouldn't be having your -- the  
4       government wouldn't be having its spent  
5       nuclear fuel on somebody else's property who  
6       then would claim a taking.

7               So you would have to have  
8       authority for the government to appropriate  
9       this land. But then you would still have to  
10      store it, and you would have to guard it,  
11      and you would have to maintain it, and it's  
12      quite possible that what would happen is you  
13      would enter into contracts with the current  
14      utility that runs it to do that.

15             Maybe you can negotiate a better  
16      contract price than what you get in  
17      litigation. Maybe there would be third party  
18      contractors that would take over this  
19      function. I suppose that's a possibility.

20             I mean, I think these things are  
21      -- so that's something around the edges. I  
22      don't know that you save a lot of money that

1 way, but maybe you save some money that way.

2 You talked about a -- you know, a  
3 centralized facility. I have no idea what  
4 the expenses are in doing that. I can't tell  
5 you. So I can't tell you whether that saves  
6 your money.

7 Does it hold out the possibility  
8 of DOE being able to perform earlier than it  
9 otherwise might be? Well, certainly than  
10 what we would expect now, since we don't  
11 have anything on the table.

12 MEMBER MACFARLANE: So it -- just  
13 let me be clear -- if DOE would take title  
14 to the spent fuel that is stored on-site,  
15 say the dry casks, in the dry casks on-site,  
16 and the land on which they sit, that is seen  
17 as performance, yes? Or no?

18 MR. HERTZ: I think we would  
19 argue that is performance.

20 MEMBER MACFARLANE: Okay.

21 MR. HERTZ: Or as the statute  
22 would have to be changed --

1                   MEMBER MACFARLANE:   So that means  
2   then --

3                   MR. HERTZ:   I think we would --  
4   I'm not sure the statute would have to be  
5   changed. We think you'd have to change the  
6   statute for that.

7                   MEMBER MACFARLANE:   You'd have to  
8   change the statute to do that?

9                   MR. HERTZ:   I think so, because  
10   the statute now prohibits on-site storage as  
11   I recall. So -- but that's something that  
12   could be done and you could change the  
13   statute and in effect presumably ongoing  
14   future contractual liability.

15                  MEMBER MACFARLANE:   Right. Okay.

16                  MR. HERTZ:   If you change -- you  
17   would have to change the statute because the  
18   statute now contemplates taking stuff off0-  
19   site.

20                  The -- so that's one potential.  
21   One potential, as I said, is the interim  
22   storage, where -- if you -- for sure, if you



1       could get the rate up to the -- you could  
2       build it fast enough, or a number of these  
3       facilities, you could get the rate up beyond  
4       what the federal circuit said the rate  
5       should be.

6                You could get to the point where  
7       then DOE has taken as much staff as the  
8       federal circuit thinks that it should have  
9       taken by a certain time. You could cut off  
10      liability at that point, when you reach that  
11      crossover point.

12              You, I suppose, you could -- you  
13      know, again, Congress has certain abilities  
14      to make changes to a statute and it could  
15      affect certain aspects of the contract,  
16      probably not the fundamental bargain that  
17      was struck, but perhaps the remedies or the  
18      procedures for the remedies that a utility  
19      would invoke.

20              In other words, maybe you more  
21      strictly define what it is that utilities  
22      can get for breach of contract. You maybe

1       limit some of the more aggressive theories  
2       that utilities put forward that we are now  
3       litigating about and perhaps a court will  
4       see that as changing -- changes around the  
5       margin but not changing the fundamental deal  
6       that was struck.

7               MEMBER MACFARLANE:   So, by a new  
8       law, Congress cannot say we are just erasing  
9       these contracts --

10              MR. HERTZ:   I think that's right.

11              MEMBER MACFARLANE:   This was a  
12       mistake, we made a mistake in the past law,  
13       you can't do that?

14              MR. HERTZ:   Well, they can do it,  
15       but there would be liability imposed on the  
16       United States.

17              MEMBER MACFARLANE:   Okay.

18              MR. HERTZ:   So, I think, again I  
19       think in terms of -- around the edges there  
20       may be things to do, but in terms of  
21       limiting the government's liability.

22              I'm not recommending nay one of

1       those --

2                   MEMBER MACFARLANE:   That's fine.

3                   MR. HERTZ:   I don't know what the  
4       costs of them are --

5                   MEMBER MACFARLANE:   I just thing,  
6       thinking out loud --

7                   MR. HERTZ:   I appreciate it.

8                   MEMBER MACFARLANE:   That's very  
9       handy. Anybody else want to -- yes.

10                  MR. HOLSTEIN:   Yes, at some risk  
11       --

12                  MEMBER MACFARLANE:   There's  
13       always risk, right?

14                  MR. HOLSTEIN:   I have been a  
15       proponent of the take-title solution that  
16       you have just been describing for some  
17       number of years now. It's been my view that  
18       the contractual -- the requirement imposed  
19       on the Department of Energy to enter into  
20       contracts with utilities was part of -- was  
21       one of several features of the legislation  
22       through which Congress sought to ensure that

1       there would be continued progress toward a  
2       permanent disposal solution.

3               The contracts, in that sense  
4       then, represent an assumption that there  
5       would be a place to which the government  
6       could move the waste, once having entered  
7       into these contracts and eventually taking  
8       title to it.

9               I believe that the notion of  
10       taking title and using -- and then storing  
11       it on-site does represent both a lower-cost  
12       solution than centralized, temporary  
13       storage, or interim storage facility or  
14       facilities, for some of the reasons that you  
15       have discussed, but also for the reasons I  
16       mentioned earlier about the costs associated  
17       with the inevitable delays in siting even an  
18       interim facility, which doesn't -- which  
19       would not have to meet necessarily the same  
20       geophysical and other waste isolation  
21       requirements of a permanent repository, but  
22       still would face consider political hurdles

1 as I previously discussed.

2                   However, in taking title, and  
3 then storing the waste on site by agreement  
4 with the utilities, I think there is --  
5 there would have to be an understanding and  
6 a specific plan, which hopefully this  
7 Commission will help craft, for moving us,  
8 ensuring continued progress toward a  
9 permanent disposal solution, and not  
10 studying the problem indefinitely.

11                   And I make no predictions or  
12 recommendations about exactly how or where  
13 that part should be done.

14                   But with respect to your second  
15 question, very briefly, should the -- do we  
16 believe the Commission should in fact create  
17 a separate corporation. I don't count myself  
18 among the people who work in various fields  
19 that require interaction with the Department  
20 of Energy, who believe that the Department  
21 is the gang that can never shoot straight.

22                   I think the program has been

1 controversial, and yes it has been  
2 mismanaged at times in its past. However I  
3 do believe that if you have -- if you insist  
4 upon the same degree of public transparency,  
5 public participation and scientific  
6 integrity that have -- that I think are the  
7 underpinnings of a successful program, then  
8 I think creating a separate corporation  
9 doesn't save you a whole lot of money or  
10 give you any particular short-cuts.

11 And I think, as I suggested  
12 before, there are new costs associated with  
13 creating a separate corporation. Certainly  
14 it's a live option, but I don't really think  
15 it's necessary. The much harder problems are  
16 cementing the political problem to make some  
17 of these other tough decisions.

18 MR. COOK: Let me offer one  
19 thought on that and I think I'm in agreement  
20 with some of my colleagues and with you, who  
21 see taking title to some of the commercial  
22 spent fuel is a good place to start.

1                   Personally my gut feeling is we  
2                   might be smarter to start moving some of  
3                   that, even though there is a cost associated  
4                   with the move.

5                   But as Michael Hertz said, if you  
6                   leave it in place at the commercial  
7                   utilities, there may be a cost involved in  
8                   having to buy the land underneath the spent  
9                   fuel to avoid a taking.

10                  So someone would have to do that  
11                  trade-off. I'm a big agnostic on whether a  
12                  new Fed Corp or an honest-to-goodness  
13                  private corporation is the solution.

14                  I think -- DOE occasionally  
15                  shoots straight but there's been a lot of  
16                  water under the bridge right now, and the  
17                  relationship is such that I don't know that  
18                  keeping it in DOE is perceived as a  
19                  solution. Keeping it in DOE could well be  
20                  perceived as a stall.

21                  The one thought, which actually  
22                  is going to make your job harder, is when

1       you get to that question of what is a new  
2       entity, it's very possible that the new  
3       entity that is best equipped to deal with  
4       commercial spent fuel is not the same animal  
5       that is the best entity equipped to deal  
6       with the government's spent fuel and high-  
7       level waste.

8               We can envision a situation where  
9       the assets in the nuclear waste fund, the  
10      incoming revenues, the liabilities that  
11      attach to that for commercial spent fuel,  
12      all get inherited by some new entity who has  
13      got a laser-like focus on their new mission.

14             I'm not sure I can picture a  
15      situation where any new entity is willing to  
16      take over responsibility for government  
17      spent fuel from Navy reactors, or for high-  
18      level vitrified waste from Hanford.

19             So you may -- there may be coming  
20      a fork in the road where the solutions for  
21      those two parts of the problems require a  
22      different organizational entity.



1                   MEMBER MACFARLANE:   Anybody else?

2                   No? Right, thank you.

3                   CHAIR SCOWCROFT:   Thank you,

4                   Allison. Pete?

5                   MEMBER DOMENICI:   Thank you very  
6                   much, Mr Chairman. Let me just say to those  
7                   who asked questions, I think they were very  
8                   good questions and I compliment you. I think  
9                   we got something out here the last hour  
10                  that's -- we can chew on and watch for.

11                  I want to say to all of the  
12                  members of the Commission that I have to  
13                  make a confession, because all of these  
14                  people up here already know this. I'm not  
15                  sure that Michael does.

16                  But all the others know that I am  
17                  about 90 percent responsible for how messed  
18                  up the federal budget is, and how crazy the  
19                  rules are for costing out things, and what  
20                  gets charged to the budget and what doesn't,  
21                  who gets charged first.

22                  We made a lot of crazy rules, but

1       you understand, we took over -- the budget  
2       act was passed -- we took over a government  
3       that had no budget and we didn't even know,  
4       as freshmen Senators, how much we were going  
5       to spend in a year.

6               So we had a little minor  
7       revolution, and everybody signed up, all the  
8       new ones, and said next year, we vote en  
9       masse against appropriations, unless you  
10      give us a system that tells us how much we  
11      plan to spend.

12             Because one appropriation bill,  
13      you have to keep your computer and add it up  
14      and go to the phone and say does this make  
15      \$68 billion that we are spending? No.

16             So by George, that little coup  
17      caused us to pass the budget impoundment  
18      act. Now if any of you want to really read  
19      something that will stir your great brains,  
20      because we have got a lot of them here, just  
21      read that and see if you can understand it.

22             I mean, it's pretty damned tough,

1 I'll tell you. We didn't know what we were  
2 doing. And I am not sure to this point  
3 whether we helped the government or didn't,  
4 but at least we now have some rules, as wild  
5 and crazy as they may be, we got some, and  
6 they cover most things.

7 And if you're worried about what  
8 happened to the trust fund, here, for  
9 nuclear improvements, oh, somewhere between  
10 25 and 30 billion dollars, just think with  
11 me, just a couple of things.

12 The trust fund, according to  
13 Lyndon Johnson and his concept of a unified  
14 budget -- that's how it all started -- we  
15 put everything on budget, so it helped with  
16 what the budget looked like in his day. It  
17 made it look like we were really getting --  
18 making some headway, so we put a unified  
19 budget as the concept.

20 So everything is supposed to be  
21 on. Well, when you put things on that cost a  
22 lot and that keep costing, pretty soon you

1 are in the red, and pretty soon some of  
2 those things that are in the budget that you  
3 thought you had money to pay for and you  
4 called it a trust, isn't there anymore  
5 because your budget was in the red and so  
6 you used their money.

7 And let me tell you the biggest  
8 one, I mean that's the senior citizens ought  
9 to be upset, because their big trust fund is  
10 Social Security, and we will soon be in a  
11 position where we don't have a trust fund to  
12 cover their Social Security, and there's no  
13 way we can do it -- make it solvent, because  
14 it's too big an imposition on the budget, on  
15 the spending of our country, so we have to  
16 wait a while and fix it over time.

17 And the last point is, the U.S.  
18 House did not have this burden. Mike, you  
19 understand, I'm not sure that everybody is.  
20 Maybe they do. U.S. House uses -- does not  
21 use the budget act. It uses the committee on  
22 - which is the committee that determines --

1       The Rules Committee determines all their  
2       bills and they don't need to use the budget  
3       act.

4                       We had to in the Senate, so we  
5       were making the crazy noise and the House  
6       could joke about it. And yet it was the only  
7       way to get a budget.

8                       MEMBER SHARP:   If the Senator  
9       would yield, I really think this is a really  
10      important point because it's so easy for us  
11      to perceive the individual things that don't  
12      go right.

13                      But if you had not passed the  
14      budget act in 1974, there was no predicting  
15      ahead what was the cost of anything that was  
16      voted on. That was anathema at the time, was  
17      my understanding. I came in with the first  
18      implementation of the budget act.

19                      But because -- so that created  
20      the CBO, that created a system in which we  
21      at least had some idea of what we were  
22      doing. So what appears crazy now may be in

1       some fashion, but it goes with the principle  
2       that somebody articulated here, you always  
3       believe you can make things worse, and you  
4       should start with that understanding.

5                   MEMBER DOMENICI: I wouldn't have  
6       done it for all those years if I didn't  
7       think we were accomplishing something. But  
8       now I want to get to this trust fund and see  
9       if we can get something practical.

10                  I recall that Senator Byrd of  
11       West Virginia and a Senator from Texas --

12                  DR. TELSON: Gramm.

13                  MEMBER DOMENICI: Gramm. I think  
14       it was Byrd-Gramm, Gramm-Byrd, I can't  
15       remember which. But they came to the floor  
16       and literally, one of the few times they  
17       just slaughtered me as Chairman of the  
18       budget committee, and that had to do with  
19       the money in the trust fund for highways,  
20       that is the tax on gasoline went into a  
21       trust fund just like the trust fund we are  
22       talking about.

1                   And they came to the floor, but  
2                   one of you is going to have to help me. My  
3                   recollection is they were trying to find a  
4                   way to immunize that fund, whatever number  
5                   of billions per year, from the effects of  
6                   the budget act, by passing a bill that did  
7                   what?

8                   I am going to guess that it said  
9                   the money coming into the budget of the  
10                  United States for highways and byways can't  
11                  be spent for anything else other than that,  
12                  and by doing that, they got the money and  
13                  were not charged as violating the budget  
14                  act.

15                  The budget act had to dance to  
16                  the tune created by that bill and couldn't  
17                  take the money away from them. Do you  
18                  remember, Mike or -

19                  DR. TELSON: I do, but I don't  
20                  remember exactly what the provision was, but  
21                  they -- and I don't think in the ultimate  
22                  analysis they won, in the sense that you

1       could still get to them because the  
2       appropriations committee still controlled  
3       their --

4                   MEMBER DOMENICI:   Well I would  
5       like to ask, Mr. Chairman, that we have our  
6       staff look at what that bill, that was  
7       passed by Senator Byrd and the Senator from  
8       Texas, how did it affect the trust fund for  
9       highways and does that have any relationship  
10      to the trust fund we have got. I think it  
11      might.

12                   Likewise, it seems to me that we  
13      ought to have a thorough analysis of the  
14      contracts and what they do and what they  
15      don't do, that is the contracts that we have  
16      with reference to cleanup, with the  
17      companies, what are they supposed to do and  
18      what are they not supposed to do.

19                   And let me make sure that I heard  
20      somebody say something right. If we were to  
21      say that part of our plan for the future is  
22      that the on-site location of cement casks



1 containing waste, waste products from power  
2 plants, and put on-site and title would be  
3 taken by the government, did you all say  
4 this: we had to amend some statute in order  
5 to do that?

6 I thought that could be done by  
7 virtue of what's contained in the contracts  
8 and the statute, that is the declaration of  
9 title and the use for 20 to 40 years as a  
10 temporary waste site. Do we have to change  
11 any laws to accomplish that? Anybody know?

12 MR. COOK: One comment, Senator,  
13 and, Michael, correct me if I am wrong, but  
14 not Congress, the courts had made a  
15 determination that the Nuclear Waste Fund  
16 could not be used by DOE to pay the cost of  
17 on-site storage of spent fuel. So while I  
18 think the fix may be allowable in a  
19 technical sense, we would have to address  
20 that funding issue to get the funding  
21 realigned with the real-world fix.

22 MEMBER DOMENICI: In any event

1       it's imperative that we know the answer to  
2       that. That's -- if we don't know the answer  
3       to that and if it doesn't come out our way,  
4       then we are going to have to be recommending  
5       a statutory change up front, ahead of this,  
6       in order to carry out our plan, and I think  
7       that will happen.

8               Are any of you, by virtue of what  
9       you do or did before, aware of how much  
10       money in the federal unified budget, pick  
11       any year, this year, what percent is  
12       entrusted -- has trust fund status, thus  
13       saying to the major budget, this is our  
14       money, don't spend it. Do you know what  
15       percent? Would that be too hard to find?

16              MR. HEZIR: That number, I think,  
17       is available. I don't know what it is off  
18       the top of my head, but there are -- there  
19       is -- there have been several studies done  
20       of the trust funds in the federal budget and  
21       what they constitute.

22              MEMBER DOMENICI: I think if you

1       can find one of those, it's a good one. I  
2       think it would be good to have in the  
3       record, it would be helpful to us to  
4       understand that we are not alone in this  
5       problem. There are lots and -- a lot of  
6       people that assume they have money and don't  
7       have money.

8                 Now let me also make the point.  
9       Just because this trust fund is in a budget  
10      that's in the red and thus we don't have  
11      money, that the money for the trust funds --  
12      that only means that if we do spend the  
13      money we add to the deficit, is that not  
14      correct, Mike?

15                DR. TELSON:   Yes.

16                MEMBER DOMENICI:   So if in fact  
17      we have a valid enough reason and a powerful  
18      enough reason, we can indeed take it off-  
19      budget and -- recommend that it be taken  
20      off-budget and that the federal government's  
21      budget bear the burden of that amount being  
22      added to the deficit of the United States,

1 is that not correct?

2 DR. TELSON: That's correct.

3 MEMBER DOMENICI: Yes. So I say  
4 to fellow commissioners, I'm not sure what  
5 would happen, but if the recommendations are  
6 for a bona fide, honest to God, great plan  
7 for the United States, and part of that was  
8 you have got to take this money and spend it  
9 even if it adds to the deficit, it would not  
10 add to the deficit in one year.

11 It would be spread out, if in  
12 fact you provided that it was paid as needed  
13 for the following things, it would add a  
14 little -- a portion of the \$25 billion each  
15 year would be charged to the budget. As I  
16 recall it wouldn't be the whole thing.

17 You'd have to write it the way  
18 I'm saying it -- to happen. It could be  
19 written thus. Could it not, Mike?

20 DR. TELSON: Yes sir, it depends  
21 on the option you would write, and I think  
22 you would need to have the staff work on

1       some options that you could discuss.

2                   MEMBER DOMENICI: I thank you,  
3       Mr. Chairman. I thank you. Let me say it was  
4       a pleasure working with you all when I  
5       worked with you. I wish I remembered more of  
6       the funny things that happened so we could  
7       share them because they were indeed  
8       tremendous. We had to make things happen.

9                   One time we got the brightest  
10       people in America to study for at least two  
11       weeks and give us something private, and  
12       that was what are we going to do with the  
13       surplus when it gets so big that it starts  
14       eating up the private economy in such large  
15       gobs that we -- our country would be in  
16       jeopardy.

17                  CHAIR SCOWCROFT: Well, we fixed  
18       that problem.

19                  MEMBER DOMENICI: So we -- that  
20       was a problem and so we fixed it, we went in  
21       debt so bad that we're broke.

22                  Anyway that was a serious

1 question, and it is the same question that  
2 hounds the trust fund for Social Security if  
3 you try to take it off-budget and say we are  
4 going to make it sound, it is so big that  
5 you don't know how to manage it.

6 And so we have argued for that  
7 for two weeks. Who would manage such a fund  
8 if you took it off? It would be so powerful  
9 that it could control the country. I mean,  
10 bigger than Fannie Mae ever thought to be in  
11 terms of basic assets, so we are just a  
12 little tiny fish here. We could ask them to  
13 immunize us from this problem and let us  
14 take it off-budget, and then we're going to  
15 be looking at that.

16 Thank you, Mr. Chairman.

17 CHAIR SCOWCROFT: Thank you,  
18 Pete. Phil?

19 MEMBER SHARP: Yes. I think it's  
20 appropriate today is Groundhog Day. You  
21 remember the movie in which the guy is  
22 trapped and the same day just repeats itself

1 over and over and over and over again, and I  
2 think we're here.

3 And ironically, we are even here  
4 on the budget surplus. I mean, the Nixon  
5 administration, in part the argument was,  
6 the fear was the economy would slow down  
7 because the budget was going to go into  
8 surplus, and so revenue-sharing was one way  
9 to overcome that, give the states some  
10 money.

11 But we will get a chance to  
12 repeat this again. Let me go to the question  
13 of, we have on the books, collected the  
14 money. This trust fund is in the black. This  
15 trust fund is not in the red. It's the rest  
16 of the federal government that is in the  
17 red.

18 So we have on the books whatever  
19 you said it was, \$27 billion in principle  
20 and interest or something of that sort. Now  
21 that money is dedicated to be used only for  
22 that purpose, correctly under the law, I

1 believe.

2           So we still have a situation  
3 where at some point there could be a  
4 reckoning, especially given the fact that if  
5 we go forward collecting the fee for the  
6 next 25 years, at some point, I would think  
7 utilities and others would be able to raise  
8 suits that say certainly you couldn't raise  
9 the fee again without being challenged on  
10 this, I think, that says you have already  
11 got the money, and now you are trying to get  
12 more in. Can you give us any insight into  
13 what that continuing place on -- now this is  
14 not just money that's disappeared after all,  
15 I mean, an obligation, let me put it that  
16 way, hasn't disappeared.

17           MR. HERTZ: Well, I mean, just --  
18 utilities have filed such a suit previously  
19 already.

20           MEMBER SHARP: Of course, yes.

21           MR. HERTZ: And they filed it in  
22 the United States Court of Appeals for the



1 District of Columbia asking for two things:  
2 one, asking for the Secretary to do a  
3 reassessment of the fee under the statute;  
4 and two, that the fee be suspended.

5 And in fact, because the  
6 Secretary did do a reassessment of the fee,  
7 did a re-analysis, the Court of Appeals for  
8 the D.C. Circuit dismissed the case as in  
9 one case, moot, because that half was done,  
10 and on right, because the question -- they  
11 have another way to challenge the fact that  
12 the Secretary isn't recommending challenging  
13 the fee.

14 We would expect that that case  
15 would get refiled. But in terms of when you  
16 reach a point where you think you have -- I  
17 can't give you the numbers on that.

18 MR. HEZIR: I would just say,  
19 Congressman, that the fund right now has a  
20 surplus. I think it's a little over \$24  
21 billion. That number is reported on the  
22 books. It's reported in the budget.

1                   So from the counting standpoint  
2                   it's there. From a cash standpoint obviously  
3                   it's not. It's a bunch of IOUs between DOE  
4                   and the Treasury.

5                   What happens going forward is  
6                   this. Unless the -- unless there is some way  
7                   to begin to reconcile that balance with the  
8                   program, and the program requirements and  
9                   the program spending, that will build up,  
10                  that IOU builds up, and when the time comes  
11                  when the IOU needs to be cashed in, it will  
12                  be, given our overall budgetary situation,  
13                  it will become exceedingly difficult to cash  
14                  that in.

15                  And so we may have a situation  
16                  where, while the IOU exists on paper, that  
17                  the ability of the government to honor that  
18                  might become limited or restricted or  
19                  impeded. And so consequently, then, that  
20                  then sets up, as Michael just referred to, a  
21                  potential set of more litigation where the  
22                  utilities could come in and say that the

1 money should be refunded or whatever.

2 So there's sort of a practical  
3 problem, and the longer of the delay, I  
4 mean, the problem we have here is that the  
5 longer the delay, the worse the problem gets  
6 and it just kind of gradually gets worse and  
7 worse. It's sort of like the Judgment Fund,  
8 as several of my colleagues have pointed  
9 out, the Judgment Fund is a permanent,  
10 indefinite appropriation.

11 The Treasury Department, once  
12 they sign the settlement, the check can be  
13 written, it doesn't require any further  
14 action by OMB or Congress. So it becomes  
15 just sort of deceptively simple, but it  
16 continuously bleeds the Treasury, and I  
17 think that's another aspect of all this, the  
18 liability goes up, it's harder to get access  
19 to the funding and in the meantime, we  
20 continue to spend money through the Judgment  
21 Fund for an activity that really should be  
22 paid for out of the waste fund.

1                   MEMBER SHARP: I personally would  
2                   love to get this off-budget. But I do think  
3                   it's important for us to recognize, which we  
4                   haven't really articulated, that I believe  
5                   the theory of good budgeting for many years  
6                   in this country was keep everything on-  
7                   budget, that this was a way of escaping a  
8                   clear public responsibility for how money is  
9                   and obligations are engaged.

10                   And I think it's well to remind  
11                   ourselves that part of the financial crisis  
12                   of Enron and several of these other people  
13                   was precisely over their capacity to get off  
14                   their balance sheet -- I forget what the  
15                   special entities were called -- where they  
16                   incurred enormous debts without it being  
17                   clear to the stockholders or the analysts as  
18                   to what they had, and they went into deep  
19                   financial trouble.

20                   So these things are usually not  
21                   just a little political game. There are  
22                   larger questions at stake, and it's very

1 easy for us to get confused about that.

2           The one last question I'd have is  
3 just to go back to what Allison was trying  
4 to get from you. Just in the broad --  
5 because you -- a number of you have had such  
6 extensive experience with this program, I  
7 just want to give another shot now or even  
8 as the weeks go ahead, if you think about  
9 this, is what would you suggest are the most  
10 useful things that we might focus on, either  
11 as what we articulate in the report or what  
12 we recommend in the report because there is  
13 a plethora of stuff here and we all know if  
14 we pile in all the kitchen sink that this  
15 will go -- this will be less relevant.

16           CHAIR SCOWCROFT: I might just  
17 add before you all answer that, that as I --  
18 it's my understanding that Mr. Hezir has  
19 already offered to develop among you options  
20 for consideration for us, is that correct?

21           MR. HEZIR: Yes, that's correct,  
22 and we have had some preliminary discussions

1 among several of us on the panel, and I  
2 mean, we can offer some ideas now and then  
3 maybe get back with some follow-up.

4 CHAIR SCOWCROFT: Well, this is a  
5 very important question for us, and so both  
6 now and in a paper would be extremely  
7 useful.

8 MEMBER SHARP: Well, one is I  
9 think you've got to focus on this very  
10 critical question of what to do about  
11 financing, I think. What I was trying to  
12 give some of our people because they have  
13 such breadth of experience, is are there  
14 other questions that you would say we ought  
15 to focus on, and if you have a  
16 recommendation on that, that would be great  
17 too, but is what are the central things that  
18 we can make the greatest contribution for.

19 MR. HEZIR: I can -- let me start  
20 off again, and I'll let the others chime in.  
21 If you look behind us, this was a chart that  
22 I prepared that we have had some -- a little

1 discussion on. I don't think necessarily --  
2 I wouldn't suggest that there's agreement on  
3 it.

4 But we, sort of, looking at the  
5 longer-term, there's two sort of fundamental  
6 ways to kind of, if you will, fix the  
7 budget, and neither of these necessarily  
8 means taking it off-budget.

9 But it really -- what they really  
10 -- the underlying concept here is to go back  
11 to the concept of a trust fund. The trust  
12 fund is holistic, so you have both the  
13 receipts, the spending, everything in that  
14 is in, holistically presented.

15 And the two sort of general  
16 options here, the first one is if the fees  
17 were to be -- the annual fees, that is --  
18 were to be reclassified as what's called an  
19 off-setting collection, and, again, that's  
20 an accounting term, but it has great  
21 significance for the appropriators because  
22 it means the Appropriations Committee, from

1 a scoring standpoint, those fees now get  
2 scored as part of the appropriation.

3 So when the appropriators  
4 appropriate funds for this, they do it on a  
5 net basis, so that from a -- if you will,  
6 the budget footprint is presented on a net  
7 basis, you know the spending net of the  
8 receipts.

9 The Bush administration actually  
10 proposed legislation to do this back in  
11 2005, and -- but the way they presented it  
12 in the budget created some problems because  
13 they basically put it in the budget, assumed  
14 the legislation would be enacted and  
15 obviously it wasn't, although it was at that  
16 time reported out of a House committee and  
17 that's as far as it got.

18 So that would go a long ways to  
19 reconciling the problem. What it does not do  
20 is it does not address the corpus, the 24  
21 billion. In other words this is a kind of a  
22 going-forward solution. It affects the



1 future fees coming in, but it doesn't affect  
2 the monies that are already there.

3 The second option is kind of  
4 unifying the fund, the trust fund, but doing  
5 it in a different way, which is to basically  
6 create a trust fund and it would be on-  
7 budget but not subject to appropriations, so  
8 that the entity that would be responsible  
9 for managing the program, whether it's DOE,  
10 fed corp or whatever, would have the  
11 authority to spend whatever monies are in  
12 that trust fund for whatever the approved  
13 program is.

14 And, again, that would be  
15 recorded in the budget, but, again, the  
16 transactions would be presented on a net  
17 basis, so it would be whatever the incoming  
18 receipts are less whatever the spending is  
19 in that particular year.

20 The other virtue of this is that  
21 if the corpus were part of this trust fund,  
22 that the entity could tap into the corpus as

1       needed, as Senator Domenici pointed out  
2       later, it wouldn't necessarily be scored all  
3       at once, but it would be scored as it is  
4       spent.

5               The one thing with this option, I  
6       think, that would need to be -- need some  
7       careful consideration is what would be the -  
8       - if you are going to no longer have it  
9       subject to annual appropriations, the  
10      question would be, what would be the  
11      oversight mechanism?

12             I think that -- I think Kevin  
13      pointed this out earlier. I don't think  
14      Congress is prepared at this point to  
15      basically turn over the fund to, whether  
16      it's DOE or some new entity, they are going  
17      to want to have some sort of oversight and  
18      control mechanism.

19             And there probably could be --  
20      and there are ways it could be structured,  
21      short of an appropriation. One approach  
22      would be to allow the appropriators to set a

1        limitation. This is a little bit like how  
2        the Highway Trust Fund works, where the  
3        underlying authority allows you to spend the  
4        money, but the appropriators could, for  
5        whatever reason, put a limitation on it.

6                Another way it could work is the  
7        way it works with the Bonneville Power  
8        Administration where periodically the  
9        Congress authorizes Bonneville to borrow a  
10       certain amount of money and they do it in  
11       chunks that maybe last three to five years,  
12       and then they have to come back to Congress  
13       at that time.

14               A third way it could be done  
15       would be like TVA, where Congress sets an  
16       overall cap on TVA's debt ceiling, and TVA  
17       has to operate within that ceiling, or if it  
18       wishes to expand beyond that ceiling it has  
19       to go back to Congress.

20               So there's ways to do this other  
21       than through annual appropriations that  
22       would still provide some sort of an

1 oversight, and that would be -- probably it  
2 would be a very important piece, it would be  
3 part and parcel.

4 And then last but not least,  
5 there's sort of some hybrids. I've mentioned  
6 one of them, where it's sort of this concept  
7 of an appropriated entitlement, where  
8 there's an underlying authority to spend the  
9 money, but the appropriators could set a  
10 limitation on it.

11 Another way to do it is that this  
12 authority could have separate budgets for  
13 operating and capital, and for example the  
14 operating budget could be subject to annual  
15 appropriations and the capital budget could  
16 be subject to a different set of oversight.

17 And then last but not least, the  
18 point we made throughout the presentation  
19 this morning about not only reporting the  
20 cash but also reporting the accrued  
21 liability so that Congress has a full  
22 picture of the entire, you know, the whole

1 financial situation with the waste fund.

2 Then down at the bottom, I just  
3 pointed out again, in thinking about --  
4 through these options and how they might  
5 work, we listed here four criteria that we  
6 think would be important to consider that  
7 would be kind of tests you would want to  
8 apply to any option.

9 Obviously the first would be does  
10 this help the program meet its obligations  
11 and improve the certainty in which it can do  
12 so. The second one is we unify the trust  
13 fund so that it really is a trust fund and  
14 not simply a set of separate accounts.

15 Thirdly, I think there's an  
16 important point here about transparency,  
17 that we show all the liabilities, all the  
18 spending, all of the assets. We don't have a  
19 piece in the Judgment Fund or a piece here  
20 and there.

21 And then lastly, I think a point  
22 that maybe this gets back to your question,

1       what's really feasible here in the near term  
2       because, I mean, these options would be a  
3       kind of a permanent solution, there may be  
4       ways to approach this stepwise, and maybe  
5       with that I'll kind of stop here and see if  
6       my colleagues have some additional comments  
7       on that.

8                   DR. TELSON: I would add that all  
9       of these need to be looked at a little  
10      deeper because some of them involve  
11      congressional statute and that's when the  
12      rubber hits the road, that's when the  
13      scoring would hit.

14                   And I go back to what -- my  
15      answer to you, Commissioner Bailey, that I  
16      think it would be very useful for this  
17      Commission to lay out the problem in its --  
18      and that would be a very good education. Do  
19      you agree, Commissioner Sharp?

20                   I think that would be a really  
21      good educational thing. And I trust that the  
22      Congress will -- it could be moved to do

1 something intelligent, you know, here,  
2 because the truth of the matter is that  
3 doing this would not really, at that moment,  
4 increase spending.

5 The scoring would show the  
6 increased spending, but the spending would  
7 lag much later, okay? So there's an issue  
8 about scorekeeping versus true accounting of  
9 it, in other words the impact on the actual  
10 deficit would be different than what you  
11 would show in scorekeeping, okay?

12 MEMBER SHARP: Are you saying at  
13 the time of changing the law, because these  
14 things would not have real spending impacts  
15 for multiple years potentially, you are  
16 saying you would not have a scoring effect?  
17 Is that what you are saying or no?

18 DR. TELSON: Well, CBO would make  
19 an estimate, and so would OMB, it would be -  
20 - of what that would be, and it's anybody's  
21 guess as to what it would be, and how  
22 accurate that would be.

1                   And let's say if you took, going  
2                   back to my extreme example, if you took the  
3                   \$24 billion off-budget, that doesn't mean  
4                   you are going to spend -- it would show up  
5                   as 24 billion, but it's not -- you certainly  
6                   are not going to be spending \$24 billion  
7                   that year, you know.

8                   So it's an issue of perception  
9                   and how the budget committees in Congress  
10                  would look at it given all the other stuff  
11                  they will be dealing with this year. But  
12                  hopefully this could be dealt with not this  
13                  year but next year, when calmer heads might  
14                  prevail, you know.

15                  MR. HOLSTEIN: We -- I guess I  
16                  would just repeat my point, that the -- by  
17                  giving the managers of the program access to  
18                  the fees -- the fee revenue, whether that's  
19                  done by taking the budget for this program  
20                  off-budget, creating a separate corporation,  
21                  or leaving the program with the Department  
22                  of Energy, you won't necessarily see



1 progress accelerated toward a final disposal  
2 of radioactive waste, if there isn't a  
3 strong program plan. And I have followed  
4 your previous deliberations enough to know  
5 that you have recognized that point  
6 explicitly.

7               So I would just, Congressman, go  
8 back to your question, which is what are  
9 some non-fee elements of this that ought to  
10 be kept in mind and preserved. And I think  
11 there are some very strong things about what  
12 Congress did, and, Senator, I think they  
13 would stand the program in good stead going  
14 forward.

15              One of them is the very strong  
16 emphasis on sound science, not only as a way  
17 to ensure the long-term viability of any  
18 site or sites that might be constructed, but  
19 also to enhance public trust and confidence  
20 in the government's ability and willingness  
21 to pursue the program, to carry out the  
22 program in a safe and responsible fashion.

1                   In addition to science, I think  
2                   another element is -- that has been  
3                   controversial at times and I think it's  
4                   worth preserving, is small funding paid to  
5                   or made available to affected states and  
6                   units of local government not to sue the  
7                   program sponsor, not to carry on unrelated  
8                   activities, but indeed to carry out limited,  
9                   supplemental, scientific programs of their  
10                  own.

11                  In the early days of the  
12                  government's management of nuclear waste, we  
13                  thought of public participation as simply  
14                  having fora like this, giving people a  
15                  microphone and an opportunity to speak. This  
16                  program, the nuclear waste program, has  
17                  actually demonstrated some very positive  
18                  benefits to taking a highly-complex subject,  
19                  which most local governments and many state  
20                  governments are ill-equipped to address, and  
21                  providing them, through very small amounts  
22                  of funding, the technical capability to sit

1 at the table, to participate in licensing  
2 proceedings and indeed, data that has been  
3 developed even by these small, rural  
4 counties, has been -- has met the Department  
5 of Energy's requirements for quality  
6 assurance and has supplemented the data that  
7 was submitted in the Department of Energy's  
8 license application.

9 This is a very significant step  
10 forward in transparency and in public  
11 participation and even, as it turns out, in  
12 building the scientific database that  
13 supports the program going forward.

14 So I would leave you with those  
15 thoughts as things -- elements of, and there  
16 are probably more, of the existing program  
17 or the program as we have known it, that are  
18 worth preserving.

19 MR. COOK: One comment to your  
20 question, and I'll refer to Joe's chart here  
21 on that first option of reclassifying the  
22 fees. As he mentioned, that problem was sort

1 of dumped in the appropriator's lap in FY  
2 2005, and it ultimately turned out to be  
3 unsolvable because the legislation could not  
4 pass the Senate. It did lead to some  
5 interesting internal discussions on the  
6 question of whether the appropriators would  
7 be willing to give up some control over this  
8 issue.

9 Recognize under Joe's option 1,  
10 we still have the hand on the dial, and the  
11 model that was explained for that is FERC,  
12 that's how we -- that's how FERC is funded  
13 and the majority of NRC. If for some reason  
14 Congress were to become unhappy with those  
15 agencies, we could dial down the spending  
16 rate. That would have the effect of also  
17 dialing down how much revenue they collected  
18 in a given year.

19 So they are not immune from the  
20 ups and downs of the appropriations cycle.  
21 But in any case, that 2005 experience, I  
22 think, at least in the House, a lot of

1 people would be comfortable giving up some  
2 element of that annual appropriations  
3 control, if they had the confidence level  
4 that we were moving toward an honest-to-  
5 goodness solution, and not just pushing the  
6 problem -- the term somebody used yesterday  
7 was not in my term of office.

8 Well, it can't be that dynamic.  
9 They have to have a sense that the price  
10 they pay in giving up some political  
11 control, the pill they have to swallow in  
12 terms of the scoring impact, all that's  
13 worth it, that we are going to get to a  
14 better place and get there in a reasonable  
15 amount of time.

16 And that's why I made the comment  
17 up front, there may be some small  
18 confidence-building steps on the commercial  
19 side, starting to take some of that spent  
20 fuel in some fashion. On the government-  
21 owned side maybe you start thermal testing  
22 in salt. These are things that would not be

1 funded out of the Nuclear Waste Fund until  
2 something changes how we can use that, those  
3 are things funded out of Department of  
4 Energy's budget.

5 But I would sort of view that as  
6 the down-payment you make to show that you  
7 are serious, and those are the kinds of  
8 things that -- even though you have got a  
9 good comprehensive solution, you are not  
10 going to be able to get that whole package  
11 at once. Some of those interim steps help  
12 you get there.

13 MEMBER DOMENICI: Mr. Chairman, I  
14 just want to make an observation and ask  
15 Kevin if I am correct. We could add to your  
16 thinking of how we could do the program, you  
17 could add that a program to store the  
18 defense waste that has already been  
19 vitrified, that is not to be paid for out of  
20 a trust fund, but rather out of the budget  
21 of the defense department.

22 MR. COOK: Or the defense portion

1 of the DOE budget, correct, yes.

2 MEMBER DOMENICI: That's what you  
3 say as an appropriator, but actually that is  
4 defense money.

5 MR. COOK: Yes.

6 MEMBER DOMENICI: We call it  
7 defense/DOE because it's in the DOE  
8 appropriation bill that I used to chair, but  
9 that's where the money came from.

10 MR. COOK: Correct.

11 MEMBER DOMENICI: But in any  
12 event, there's another example of getting a  
13 program going that in no way relates to the  
14 problems of the trust fund, right?

15 MR. COOK: Absolutely correct,  
16 sir.

17 CHAIR SCOWCROFT: Susan.

18 MEMBER EISENHOWER: Thank you. I  
19 have two questions and since I'm -- I think  
20 I better lump them together so that they  
21 both get answered. First of all, what's  
22 really striking about this conversation, I'm

1 sitting here pretending I'm Joe Public  
2 listening to this, what's really striking  
3 about this is the fact that we all know that  
4 there are costs associated with managing  
5 something as sensitive as radioactive  
6 material et cetera.

7 But there is a difference between  
8 cost and unnecessary cost, and what's really  
9 striking about this is not only do we have  
10 kind of a collapse in the budgeting process  
11 and a collapse in the policy process, but we  
12 have got these lawsuits on top of it. These,  
13 I mean, to an ordinary citizen, are  
14 unnecessary costs because we shouldn't have  
15 gotten into that situation in the first  
16 place.

17 So my first question, and then  
18 I'm going to put the second question with  
19 it, but the question is has there been any  
20 attempt to settle these lawsuits. Has there  
21 been any attempt to amend the contracts  
22 already, and, if so, what is the process for



1       that? How much engagement has the federal  
2       government actually had with the utilities  
3       to solve this problem without it ratcheting  
4       up, you know, further expenses on the  
5       American taxpayer. That's question one.

6               Question two is, you know, I have  
7       a country house outside of Gettysburg,  
8       Pennsylvania, and, you know, it's a  
9       fabulously historic part of the country, but  
10      few people realize that during World War I,  
11      because the federal government had an  
12      emergency to deal with, they actually used  
13      Pickett's Charge for tank maneuvers. Camp  
14      Colt was at Pickett's Charge.

15             So this was a kind of dual use  
16      thing. The government was using lands owned  
17      by a different part of the government,  
18      right, to meet an emergency. So here's my  
19      question. It seems to me that we have got a  
20      couple of factors here. One is a time  
21      factor, an urgency factor because of the  
22      lawsuits, and a confidence-building

1 requirement.

2                   Why couldn't we just start moving  
3 this stuff right now to military or  
4 government facilities that already handle  
5 nuclear materials and just do it? Wouldn't  
6 that -- so my question is, would that be --  
7 is there any legal reason to believe we  
8 could do that?

9                   I mean, the BRAC Commission is  
10 closing military bases left, right, and  
11 center, and that might take longer to get  
12 community support but there are places --  
13 National Laboratories for instance.

14                   We have been up to Maine, and we  
15 have seen these orphan sites, and they are  
16 just sitting out there in the middle of  
17 nowhere. How hard would it to be put -- you  
18 know, choose five or six of these places  
19 around the country and just move it now so  
20 that we can stop the bleeding.

21                   At the end of the day we are  
22 going to have to take our findings up to

1 Congress and we are going to have to be  
2 talking to them about money that they have  
3 already spent on something else, and it's  
4 going to be a really tough sell unless we  
5 can demonstrate that there is some way that  
6 we can save money in this process.

7 So sorry for the partial speech,  
8 but the second question revolves around  
9 legality of moving commercial fuel to  
10 another government facility so that the  
11 government can also show good faith that it  
12 is stepping up to meeting its obligations.

13 MR. HERTZ: Let me start with the  
14 settlements. I said that 74 of these cases,  
15 we have actually settled seven cases, but  
16 they cover 38 of the existing 118 nuclear  
17 plants.

18 So we made an effort to settle.  
19 In addition, now that we have a number of  
20 appellate decisions, most significantly the  
21 rate decision from the Federal Circuit, we  
22 have a better idea of what the parameters of

1        what can be recovered and what can't be  
2        recovered, and I think just yesterday, we  
3        have sent letters out to 25 or so utilities  
4        proposing what I would call the sort of  
5        second round of settlement that would  
6        include this new rate that the Federal  
7        Circuit has set.

8                    Now we are hopeful -- this was  
9        sent out after we have had extensive  
10       discussions with groups of utilities. We  
11       know what they want. We are not prepared to  
12       give them everything that they want.

13                   But, you know, looking at their  
14       claims and where the disputes are with  
15       regard to claims, we have some degree of  
16       confidence that a fair number of that group  
17       may actually settle going forward, and the  
18       settlement would consist of a -- what you  
19       would call a catch-up payment for  
20       liabilities for the lawsuits they have  
21       already filed, and then an administrative  
22       process where, year by year, they would

1 submit well-defined costs to the Department  
2 of Energy contracting officer who would  
3 review it, and then there would be a  
4 procedure for them to challenge that either  
5 in the Board of Contract Appeals or in some  
6 kind of binding arbitration.

7           So we are hopeful that we are  
8 going to be moving on the settlement track.  
9 With regard to the contract, I am not aware  
10 that there has been an attempt to amend the  
11 contract that we have with existing  
12 utilities although that's something I think  
13 -- one of the things the Commission ought to  
14 consider is some amendments that might be  
15 made along with legislative changes that we  
16 have discussed.

17           One of the things that is done is  
18 -- to the extent that there are going to be  
19 some new nuclear power plants built for  
20 commercial use, and one of the requirements  
21 of the Nuclear Regulatory Commission is that  
22 you have a contract. here's a second

1 generation contract now that those new  
2 utilities are going to have to sign up and  
3 some have signed.

4 One of the principle provisions  
5 of that is that it puts the obligation on  
6 the government to take that waste and store  
7 it some number of years after that plant is  
8 decommissioned, so that that plant will  
9 essentially have to build all storage at its  
10 own expense, that the government won't be in  
11 breach of contract because it didn't pick it  
12 up at an earlier time.

13 So that should save the  
14 government some money. With regard to moving  
15 to government facilities, I think I am  
16 correct about this, that under the existing  
17 statute, I think Yucca is the only facility  
18 that can be used.

19 Now that could be changed by  
20 statute, and that might be, you know, a  
21 solution. But I can't tell you what the cost  
22 of that or the practicalities of that are. I

1       don't know. But I think legally you are  
2       going to need a change in the statute to  
3       accomplish that.

4                   MEMBER EISENHOWER: I just wanted  
5       to quickly emphasize that if it were  
6       possible to send it to military facilities,  
7       it would only be with the function of buying  
8       time until a suitable siting process could  
9       go through. But at least we could get it  
10      moved out now, much like the Swedes did, you  
11      know, they put it into centralized storage  
12      while they were doing a siting process and  
13      this would be -- this would make that  
14      possible. I don't want anybody who lives on  
15      an Army post here or at a National  
16      Laboratory to think -- to imagine that I  
17      thought that's a permanent solution.

18                   MR. COOK: If I can add to your  
19      second question, and I will defer to  
20      Michael's legal judgment on what's possible  
21      under existing law, I think the second  
22      aspect of that is what's practical?

1                   There seems to be a universe of  
2           candidates sites, starting with Department  
3           of Energy sites, from laboratories to clean-  
4           up sites to the old gaseous diffusion  
5           plants. There's a parallel universe of  
6           either active or closed defense  
7           installations, where you start at least with  
8           some security and you have a secure  
9           perimeter and some advantages.

10                   There may be private sites that  
11           are willing to do this for the right amount  
12           of compensation, and, again, that experience  
13           with that Global Nuclear Energy Partnership,  
14           a surprising number of communities held  
15           their hand up and said we are potentially  
16           interested.

17                   The politics, I think, are such,  
18           though, that you risk repeating the  
19           experience which ultimately worked out well  
20           in the case of WIPP, where, while you have  
21           some enthusiasm at the local community level  
22           or the site level, that is not matched at



1 the state level.

2 Now they sorted that out -- they  
3 did not sort that out successfully in  
4 Nevada. And the states will also have a  
5 level of control, whether it's over waste  
6 disposal or, in the case of Private Fuel  
7 Storage in Utah, I think someone raised it  
8 yesterday, that doughnut phenomenon, the  
9 lever they held was transportation into the  
10 site.

11 And so if this isn't done with  
12 the cooperation of the host state, I don't  
13 know that the federal government in a  
14 practical or a political sense is going to  
15 sort of throw its weight around and just say  
16 we are putting it here because it's in the  
17 national interest.

18 That's a hard -- it's possible, I  
19 think, but in a practical sense it's a hard  
20 argument.

21 MEMBER EISENHOWER: That's why I  
22 was thinking of the places that already have

1 nuclear materials, you know, like National  
2 Laboratories.

3 MR. COOK: Well, the odd irony is  
4 they are some of the DOE facilities that are  
5 storing nuclear materials that were brought  
6 back from overseas.

7 They are stored under DOE's self-  
8 regulatory authority. It's not an NRC-  
9 licensed facility, so we are willing to do  
10 that, to bring, say, foreign research  
11 reactor fuel back and store it safely and  
12 happily, but we are not willing to do that  
13 for our domestic spent fuel.

14 MR. HEZIR: If I could just add  
15 to what Kevin said, I think that not only  
16 with the foreign reactors and the government  
17 waste, I think another good candidate would  
18 be the orphan plant sites, the so-called  
19 orphan plant sites where, as you know, the  
20 plants have been fully decommissioned but  
21 the used fuel is still sitting there.

22 And so they present a potential

1 opportunity. Now I don't know, and I think  
2 the Commission would need to look at what  
3 the legal options were, but I would just  
4 offer two that might be considered, that  
5 outside of the Nuclear Waste Policy Act, I  
6 think DOE has some very broad demonstration  
7 authority. And so some of these activities  
8 could potentially be started as a  
9 demonstration activity because, in fact,  
10 there are things that need to be  
11 demonstrated in terms of the movement of the  
12 fuel and what-not.

13 I also think that -- I know --  
14 and this was explored under the former GNEP  
15 program, DOE has some authorities under the  
16 Atomic Energy Act separate and apart from  
17 the Nuclear Waste Policy Act that may allow  
18 for storage at -- of waste or spent fuel at  
19 either a DOE facility or potentially even a  
20 Department of Defense facility. So I think  
21 there are some avenues there that probably  
22 would be useful for some further

1 exploration.

2 CHAIR SCOWCROFT: All right.

3 Thank you. Mr. Co-Chairman, the last word is  
4 yours.

5 CHAIR HAMILTON: Well, it will be  
6 a very brief word. I think the Commissioners  
7 have asked a lot of very good questions. We  
8 have had an enormously talented panel, and I  
9 am most grateful to them for the, really the  
10 enormous number of constructive suggestions  
11 they have made.

12 I guess my principle conclusion  
13 from all of this is that on financing this  
14 waste program over a period of years, we  
15 have woven a very tangled web.

16 I am not sure that we can  
17 untangle it. I would just say, and Mr.  
18 Chairman, I am very conscious of the time  
19 constraints you have now, what I'd like our  
20 staff to look at pretty hard, on the basis  
21 of the answers given to us by the panel over  
22 the course of the morning, is how we finance

1       this nuclear waste program in the manner  
2       that you get assurance the funds are there  
3       to carry out the program.

4               I think the assumption of the  
5       panel is that you do it through this fee-  
6       based system that we have had for some time.  
7       That may be the way to do it, but I want to  
8       look at the other options as well.

9               In any event, it has been a  
10       terrific panel. Thank you very, very much,  
11       members of the panel for your contribution.  
12       You have helped this Commission enormously,  
13       and Mr. Chairman I yield back the balance of  
14       whatever time I had.

15               CHAIR SCOWCROFT: Thank you, Lee.  
16       I want to thank the panel for a terrific  
17       discussion of a most difficult subject, and  
18       we would be very grateful for any kind of  
19       options for consideration of the many issues  
20       that you have, because we obviously need  
21       help on this issue.

22               (Laughter.)

1                   Thank you very much.

2                   And we will now turn to the  
3           public discussion, public comment portion of  
4           the meeting. As we said yesterday, we have  
5           been providing extended comment periods at  
6           the end of our meetings and have been  
7           traveling around the country because we are  
8           genuinely interested in hearing what people  
9           have to say.

10                   Unfortunately, last week we were  
11           unable to hear from some members of the  
12           public who wished to comment due to a few  
13           individuals whose disruptive behavior  
14           precipitated a premature end to the meeting.

15                   So before we start, may I simply  
16           restate our expectation that everyone  
17           involved with our proceedings will behave  
18           civilly, and will -- and with respect.

19                   We now have a sheet with seven  
20           speakers. We will give each five minutes. We  
21           do have a system here with a red -- green,  
22           orange and red light.

1           The green light will go on when  
2           you start speaking and after four minutes  
3           the orange light will go on. After five, the  
4           red light will go on and a buzzer will sound  
5           and I would ask you to complete the sentence  
6           you are on and stop at that point.

7           I will give the names of the  
8           people who will speak and the next two in  
9           line for speaking so you can be prepared.

10           The first presentation is by John  
11           Gervers of Clark County in Nevada, followed  
12           by Judy Treichel and Robert Ashworth.

13           MR. GERVERS: Thank you, Chairman  
14           Scowcroft and Co-Chairman Hamilton and also  
15           members of the Commission.

16           This is my first opportunity to  
17           speak since back in July, when I was  
18           privileged to have 10 minutes on a panel to  
19           address the Commission about public  
20           acceptance issues.

21           And I would like to address an  
22           area today that I think could help to

1       enhance public confidence and ultimately the  
2       acceptability of a nuclear waste facility.

3               The Blue Ribbon Commission has  
4       addressed a wide range of issues, including  
5       governance and funding most recently. But  
6       there's one area that keeps coming up, and  
7       including yesterday, and that's the  
8       establishment of "environmentally and  
9       politically acceptable and socially  
10      legitimate facility-siting processes."

11              Yet very little has been said in  
12      your deliberations about a key element of  
13      public acceptance: the identification and  
14      mitigation of economic and social impacts.

15              The study of impacts is the core  
16      of the state, tribal and local government  
17      participation in the siting process. It is  
18      the key to public acceptance of a nuclear  
19      waste facility because it gives people  
20      assurance that their concerns are being  
21      addressed by their own governments and that  
22      some effort will be made to alleviate those



1 concerns.

2 I think it's been long recognized  
3 that citizens trust their local governments  
4 more than they do the more distant national  
5 government, and the authors of the Nuclear  
6 Waste Policy Act recognized this need and  
7 made provision for state and local  
8 governments to develop reports on the  
9 social, economic and environmental impacts  
10 of a repository.

11 Over the years, New Mexico,  
12 Mississippi, Washington state, Nevada and  
13 Clark County, Nevada and other counties have  
14 used resources provided by Congress to study  
15 potential impacts.

16 These studies have covered  
17 impacts on public safety agencies, land-use  
18 conflicts, jobs and incomes creation,  
19 stigma-induced property-value impacts, the  
20 establishment of baselines for monitoring  
21 programs, community health assessments, risk  
22 perception, effects on tourism, I could go

1 on. There are many of these that have been  
2 produced.

3 But I feel that there has been  
4 very little attention to socio-economic  
5 impacts in this Commission or to the need  
6 for mitigation.

7 There's been some attention to  
8 risk issues in the Disposal Subcommittee,  
9 when Hank Jenkins-Smith and others  
10 testified.

11 But there has been -- there has  
12 not been testimony from people like Paul  
13 Slovic or Kai Erikson, Paul Slovic on  
14 perceived risk, Kai Erikson on sociological  
15 effects, or Sheila Conway on monitoring  
16 programs and other impacts.

17 I hope that the Commission's  
18 report will consider the importance of these  
19 impact studies as a critical factor in  
20 achieving public acceptance for a future  
21 repository. Thank you very much.

22 CHAIR SCOWCROFT: Thank you very

1 much Mr. Gervers. Your next presenter is  
2 Judy Treichel followed by Robert Ashworth  
3 and Brian O'Connell.

4 MS. TREICHEL: My name is Judy  
5 Treichel. I am with the Nevada Nuclear Waste  
6 Task Force. I think it's really, really hard  
7 to design a good public policy, which is  
8 going to be what you would be making  
9 recommendations for, and to give  
10 recommendations concerning financial  
11 problems.

12 I remember one time a very, very  
13 long time ago, I was sitting in a meeting  
14 and I was sitting next to a man from NEI,  
15 which represents the nuclear industry, and  
16 he made the statement, I don't care where it  
17 goes. I just want it moved away.

18 And that obviously can't be one  
19 of the recommendations, but it shows the  
20 difference between the nuclear industry that  
21 is making the waste and the public that you  
22 are hearing from.

1                   You had a terrific panel  
2           yesterday. I thought it was really, really  
3           good, and I talked to some of the panelists  
4           later and I was really impressed with them.

5                   You also had a very knowledgeable  
6           panel today that I think had terrific  
7           knowledge and understanding on the financial  
8           issues, and yesterday it was the societal  
9           issues.

10                   But they are so incredibly  
11          different. The big emphasis that you heard  
12          from the people who were here today was this  
13          growing, growing, growing liability, which  
14          of course means that speed is of the essence  
15          because you have got to somewhere or other  
16          cut off the liability.

17                   Yesterday, when the people were  
18          addressing public and social issues, it was  
19          that it certainly can't be rushed. Time has  
20          to be taken. You have to deliberate. You  
21          have to listen to citizens and you can't  
22          rush them into it.

1                   So you have got two panels that  
2                   are going off in this sort of direction and  
3                   you are supposed to bring them back together  
4                   to write recommendations, and it seems very  
5                   difficult to me, and I just needed to point  
6                   that out, and I know that there are going to  
7                   be people who are watching this telecast  
8                   from the public interest side, who are going  
9                   to be really worried that you would go with  
10                  the speed issue rather than the solid,  
11                  steady, consent-as-you-go kind of thing.

12                  I also think it's really  
13                  important, and was finally mentioned here,  
14                  that the Department of Energy continues to  
15                  sign contracts.

16                  They now don't have a  
17                  date-certain deadline, but they are tied to  
18                  so many years after the plant is shut or the  
19                  license runs out, and had that happened way  
20                  back when, that still would have been in  
21                  breach of contract.

22                  So it bothers us a lot that the

1 Department is still giving the consent that  
2 goes to the Nuclear Regulatory Commission,  
3 that we will have a solution, because  
4 there's absolutely no indication that they  
5 would.

6 I think that your recommendations  
7 for a workable program have got to include  
8 the breathing room in order to do it right,  
9 and a sure way for any new program to fail  
10 is if it is rushed.

11 The public didn't choose Yucca  
12 Mountain, and they didn't approve Yucca  
13 Mountain, so it's a really bad thing if they  
14 wind up taking the hit to bear the risks for  
15 a speedy end to just end this growing  
16 liability.

17 And I think it's definitely  
18 important that you keep that in mind. I have  
19 a little time left, and if Robin -- or  
20 Morgan Pinnell runs a little short, please  
21 give her a speck more. Thank you.

22 CHAIR SCOWCROFT: Thank you very

1 much. Our next speaker is Robert Ashworth,  
2 representing NAYGN, followed by Brian  
3 O'Connell and Morgan Pinnell.

4 MR. ASHWORTH: Thank you. My name  
5 is Robert Ashworth but people know me as  
6 Bobby. I am a mechanical engineer and live  
7 in nearby Alexandria, Virginia, with my wife  
8 Sarah, my one-year-old son Caden, and for  
9 the past five years, my engineering career  
10 has been spent helping ensure the safe and  
11 reliable operation of nuclear power plants  
12 across the United States.

13 I chose a career in nuclear  
14 because I consider nuclear power to be  
15 clean, safe, reliable and a necessary form  
16 of energy generation.

17 I remain in the industry because  
18 my early views are continually reinforced by  
19 both the people and the technology that  
20 support nuclear power.

21 As an individual citizen, a  
22 father, and a young person working in the

1 industry, I look forward to the continued  
2 use of nuclear technology in this country.

3 But I recognize the challenges  
4 that this Commission faces. Today I address  
5 you not only as an individual, but as a  
6 volunteer representing the North American  
7 Young Generation in Nuclear, or NAYGN.

8 The NAYGN organization comprises  
9 more than 6,000 young professionals across  
10 North America who believe in the benefits  
11 obtained from peaceful application of  
12 nuclear science and technology.

13 Nuclear technology provides many  
14 benefits to Americans, such as sustainable  
15 sources of medical isotopes, safer foods and  
16 large-scale clean energy, electricity to  
17 help America reduce greenhouse gas  
18 emissions.

19 The benefits of nuclear  
20 technology are being realized by Americans  
21 today. However, in order for these benefits  
22 to be available in the future, America needs



1 a sustainable plan for managing used nuclear  
2 materials.

3 NAYGN supports the research and  
4 development of advanced recycling  
5 technologies and advanced reactor  
6 technologies.

7 Each year the nuclear power  
8 reactors in this country produce  
9 approximately 2,000 metric tons of spent  
10 fuel.

11 Approximately 96 percent of this  
12 fuel inventory can be recovered and used as  
13 new fuel -- 96 percent. Other countries have  
14 implemented recycling technologies to keep  
15 used nuclear fuel in the fuel cycle.

16 NAYGN encourages this Commission  
17 to recommend the continued research and  
18 development of the advanced recycling and  
19 research, which will provide a sustainable  
20 foundation for nuclear technology.

21 NAYGN also encourages the  
22 Commission to recommend establishing an

1 independent agency for managing used nuclear  
2 materials.

3 The past 30 years, electric  
4 utility customers have placed funds into a  
5 federal trust with a promise from the U.S.  
6 government to manage this fuel.

7 The promise has yet to  
8 materialize, but the funds continue to be  
9 collected. We think that an independent  
10 agency would help insulate the political  
11 whims and provide stability and also some  
12 certainty for the nuclear industries.

13 This independent agency should  
14 have access to the nuclear waste fees  
15 outside of congressional appropriations but  
16 also be fully subject to the regulatory  
17 requirements of the U.S. Nuclear Regulatory  
18 Commission and the U.S. Environmental  
19 Protection Agency.

20 Lastly, NAYGN would like to  
21 remind the Commission that there are over  
22 6,000 young professionals in North America

1       eager to be a part of the solutions for  
2       these nuclear materials.

3               Our organization is filled with  
4       young professionals that see a bright future  
5       for science and technology. We are ready to  
6       use our skills, our ideas and also  
7       enthusiasm, to implement the recommendations  
8       of this Commission.

9               After all, the recommendations  
10       from this Blue Ribbon Commission affect the  
11       future of nuclear technology. Members of  
12       NAYGN will one day lead that future.

13              So on behalf of the North  
14       American Young Generation in Nuclear, I  
15       thank the Commission for this time and this  
16       opportunity to speak.

17              CHAIR SCOWCROFT: Thank you very  
18       much Mr. Ashworth. Our next presenter is  
19       Brian O'Connell, followed by Morgan Pinnell  
20       and Katherine Fuchs.

21              MR. O'CONNELL: Commissioner  
22       Scowcroft, Commissioner Hamilton and

1       Commissioners, I am Brian O'Connell with the  
2       National Association of Regulatory Utility  
3       Commissioners.

4               As a fellow engineer, I was glad  
5       to hear Bobby is interested in this field  
6       and there is a bright future in it.

7               I am not a lawyer, but I do have  
8       some questions that I wanted to respond to -  
9       - the previous discussions.

10              On uses of the nuclear waste  
11       fund, section 302 lists the uses that are  
12       permitted and central storage and on-site  
13       storage are not included.

14              The premise was that the on-site  
15       storage would be the responsibility of the  
16       owners of the spent fuel until the  
17       government came to accept it under the terms  
18       of the contract, which of course has been  
19       partially breached, so that's why we are in  
20       this -- defining the spectrum.

21              On the question a fee-adjustment,  
22       Joe Hezir was correct. The Secretary can

1        assess the adequacy of the fee and recommend  
2        an adjustment if it's out one way or the  
3        other, but the approval is up to Congress.

4                Also, I should say, having  
5        reviewed the most recent 2010 fee adequacy  
6        assessment, I often refer to it as being  
7        data-free because it's evaluating no  
8        program, and yet there is a revenue stream  
9        and the reliance upon that corpus, that's  
10       included in the fee assessment.

11               So if that's a fiction, then  
12       future fee adjustments have to reflect that.  
13       But each of the preceding fee adequacy  
14       assessments had real numbers and were  
15       projecting, under various economic  
16       scenarios, out into the future.

17               And in all cases they projected a  
18       surplus at the end of the performance  
19       period, which would suggest to us, on behalf  
20       of the rate payers, that the fee was  
21       excessive.

22               In fact, we did request the

1 Secretary to adjust the fee on a temporary  
2 basis in view of the hiatus with the  
3 program, and that was rejected, as Mr. Hertz  
4 indicated previously, and we are, as they  
5 say, considering our options on what might  
6 be done.

7 That is not what I intended when  
8 I signed up this morning, but that's what I  
9 had on my mind. The two things I did want to  
10 talk about were two events that took place  
11 since our representative from the Michigan  
12 Public Service Commission talked to you last  
13 May.

14 That was the release of the waste  
15 confidence decision and the MIT study which  
16 was briefed to you by Dr. Moniz and his  
17 team.

18 Both of them, when you go past  
19 the headlines, are very explicit, but the  
20 popular perception that came across is that  
21 we can have extended on-site storage for up  
22 to a century.

1           Our organization doesn't think  
2           that was the basis for the contracts that  
3           were signed, and when you had your session  
4           in Albuquerque, Susan Gordon, whose  
5           organization was represented, seemed to be  
6           endorsing only one system for your  
7           consideration, and that was what she called  
8           hardened on-site storage.

9           And when asked by one of your  
10          Commissioners, well, how would the community  
11          feel about that, the answer was, well, they  
12          agreed to that.

13          No, they didn't. They did not  
14          agree when the reactor was built in the  
15          first place, and they certainly are not  
16          agreeing as they continue to pay the fees in  
17          their electric bill. They have an  
18          expectation that the waste will be moved.

19          And lastly, for Ms. Eisenhower, I  
20          want to talk to you about the BRAC business.  
21          I have a lot of experience in that. It's,  
22          like a lot of things, not as simple as it

1       might appear. But I'd love to talk to you  
2       about that. Thank you very much.

3                   CHAIR SCOWCROFT: Thank you Mr.  
4       O'Connell. Our next presenter is Morgan  
5       Pinnell, representing Physicians for Social  
6       Responsibility, followed by Katherine Fuchs  
7       and Steve Frishman.

8                   MS. PINNELL: Chairmen Hamilton  
9       and Scowcroft and distinguished  
10      Commissioners, I would like to present to  
11      you a letter that is signed by 77 groups  
12      from all over the country opposing  
13      centralized interim storage.

14                   Centralized interim storage would  
15      create de facto permanent waste sites and  
16      unnecessary risks to the public without  
17      actually solving the fundamental public  
18      health and security threats posed by current  
19      on-site storage.

20                   Instead, we urge you to  
21      incorporate into your recommendations the  
22      principles for safeguarding nuclear waste at



1 reactors, which call for safeguarding  
2 irradiated fuel at reactor sites.

3 I have five points to make as to  
4 why centralized interim storage is a bad  
5 idea. The first is that it would not result  
6 in meaningful reduction in waste sites.

7 As long as most commercial  
8 nuclear reactors remain in operation or new  
9 ones come on-line, centralized interim  
10 storage would not reduce the number of waste  
11 sites.

12 Instead, these interim sites  
13 would become indefinite long-term parking  
14 for high-level wastes.

15 Second is, we are not prepared  
16 for a large-scale transport program. The  
17 National Academy of Science in its February  
18 2006 study on the transport of nuclear  
19 waste, made it clear that no government or  
20 private entity is prepared in the near-term  
21 for the safe large-scale shipment of  
22 irradiated fuel.

1                   They identified several areas  
2           that need to be studied, including  
3           full-scale crash testing of transport  
4           packages under severe accident conditions,  
5           security issues of transportation, and  
6           extreme accident conditions with  
7           very-long-duration fires.

8                   The third, centralized interim  
9           storage is extremely expensive. According to  
10          a 2001 MIT report, to create enough interim  
11          storage for the more than 65,000 metric tons  
12          of commercial nuclear waste currently in the  
13          U.S., it would cost between \$5.9 billion and  
14          \$13.7 billion, including -- not including, I  
15          should say -- licensing, transportation, and  
16          other expenses.

17                  Fourth, centralized interim  
18          storage creates environmental justice  
19          issues. Native American communities and DOE  
20          sites, which are often located near low-  
21          income communities of color, have  
22          disproportionately borne the radioactive

1 risks of nuclear weapons facilities and have  
2 been targeted for storage sites.

3 Providing incentives, that is  
4 bribes, to low-income communities of color  
5 to accept highly radioactive waste is a  
6 textbook violation of environmental justice  
7 principles and will inevitably lead to  
8 decades of public and elected official  
9 opposition and legal battles that will  
10 detract from real solutions.

11 And fifth, the public has  
12 legitimate safety concerns. Opposition to a  
13 transportation program and questions about  
14 its safety and competence are completely  
15 rational and cannot be dismissed as an  
16 unreasonable fear of radiation.

17 According to the 2006 NAS report,  
18 "most people recognize that transportation  
19 programs are run by fallible institutions  
20 and that institutional and human error play  
21 a large role in determining transportation  
22 risks."

1                   And finally, I would like to make  
2                   my plea that you would support the  
3                   principles for safeguarding nuclear waste at  
4                   reactor sites, instead of wasting rate payer  
5                   and taxpayer funds to move irradiated fuel  
6                   around the country in the pretext of a  
7                   solution, the fastest -- the safest, most  
8                   responsible, and most economic action to  
9                   take would be to improve the security and  
10                  safety of waste storage at reactor sites.

11                 Over 170 national and local  
12                 organizations from all 50 states have signed  
13                 onto the principles for safeguarding nuclear  
14                 waste at reactors.

15                 While on-site storage is not a  
16                 permanent solution, it is the best  
17                 medium-term option for addressing the  
18                 serious and urgent security and safety  
19                 threats posed by current irradiated fuel  
20                 storage. Thank you very much.

21                 CHAIR SCOWCROFT: Thank you very  
22                 much Ms. Pinnell. Our next presenter is

1 Katherine Fuchs, followed by Steve Frishman.

2 Katherine Fuchs is representing  
3 the Alliance for Nuclear Accountability.

4 MS. FUCHS: I would like to thank  
5 Commission for giving me this opportunity to  
6 share with you some of our views on nuclear  
7 waste storage.

8 As you may already know, the  
9 Alliance for Nuclear Accountability is a  
10 network of 36 grassroots groups from  
11 impacted communities.

12 Those impacted communities  
13 include people living downwind and  
14 downstream of the various nuclear complex  
15 sites, as well as workers from the nuclear  
16 complex, who continue to suffer health  
17 effects from their service to this nation  
18 and who have often been lied to by the  
19 Department of Energy, which sort of feeds  
20 into this public distrust that we have been  
21 talking about how to overcome for the last  
22 day and a half.

1           The first thing I'm going to talk  
2       about is building trust with the siting  
3       process, and then make a few comments about  
4       the organization and scope of the so-called  
5       new entity for nuclear waste management.

6           First, the siting process must be  
7       arranged in a way that builds public trust.  
8       Building public trust inherently involves  
9       bringing in a multitude of voices, including  
10      critical voices.

11          Bringing in more people, as has  
12      been pointed out several times, can  
13      sometimes slow the process down, but I think  
14      that that's worthwhile because, well, first  
15      of all public involvement is a core -- a  
16      fundamental component of American values and  
17      how our democracy is supposed to function.  
18      Hopefully, that will not be lost on the  
19      Commission.

20          Secondly, involving critical  
21      voices often forces people to look at  
22      questions that are maybe easier to ignore

1 and ultimately results in a much safer and  
2 more effective outcome. So please, do  
3 consider that.

4 Secondly, the siting process  
5 needs to restore the public perception of  
6 our federal government as an on honest  
7 broker regarding nuclear waste issues.

8 Specifically on this point, we  
9 cannot expand the mission of WIPP. Promises  
10 have already been made to the people of New  
11 Mexico, and violating those promises is only  
12 going to increase distrust at future sites,  
13 which is not what we want to do.

14 As far as the organization of the  
15 new entity is concerned, I really want to  
16 encourage the Commission to recommend  
17 including as much public oversight as  
18 possible.

19 What I heard yesterday about one  
20 -- the governor of the host state appointing  
21 one representative is not an acceptable  
22 position to the Alliance for Nuclear

1 Accountability.

2 We think that the impacted  
3 communities need to be directly involved,  
4 and those include, of course, the tribes,  
5 whose land is often near our nuclear sites  
6 and I would like to note that those tribes  
7 have been mentioned very seldom in the last  
8 day and a half, and I would say  
9 disproportionately so, for their role in our  
10 nuclear complex.

11 And on that point, I would just  
12 like to again hold up the cleanup at Fernald  
13 as an example of public involvement and the  
14 kind of public outreach and participation  
15 that ANA would like to see in this siting  
16 process and in future waste disposal  
17 debates.

18 Moving on to the scope of the new  
19 entity, I think that it should not include  
20 reprocessing for several reasons. First of  
21 all, reprocessing only creates an additional  
22 burden of new waste streams which are



1       differently toxic and differently  
2       radioactive than the initial waste.

3               We can see how this happens just  
4       by looking at Hanford. Hanford has been  
5       mentioned a number of times in the last day  
6       and a half, but I don't recall hearing  
7       anyone say that the majority of the waste at  
8       Hanford is from reprocessing, and we have  
9       not yet come up with a way to deal with that  
10      reprocessing waste.

11             Secondly, as was noted yesterday,  
12      reprocessing does carry additional  
13      proliferation risks, which need to be  
14      weighed very seriously.

15             And thirdly, as we have heard  
16      yesterday, the free market has already  
17      rejected reprocessing as economically  
18      viable, and I don't think that we should be  
19      sinking more taxpayer money into something  
20      that the private sector won't even touch.

21             Moving on to centralized interim  
22      storage. This is something that ANA is

1 staunchly against. The new entity should be  
2 concerned with long-term solutions for two  
3 primary reasons that I can see.

4 First, waste is very expensive to  
5 extract from these interim sites, these  
6 hypothetical interim sites, and secondly  
7 there will be constituencies solidifying  
8 around these sites, making them more  
9 permanent than we would like.

10 I am just going to quickly wrap  
11 up, that transportation is another issue  
12 both economic costs and the potential public  
13 and environmental costs, and again, make a  
14 plea for hardened on-site storage as not  
15 just more economically positive, cheaper,  
16 but also as a more fair and just outcome.

17 As we heard yesterday, there's an  
18 assumption from a lot of people who don't  
19 live in the West, that everything will just  
20 be buried out in the desert somewhere.

21 And it's very unfair to the rest  
22 of the -- to those western states that have

1       been shouldering this burden for so long to  
2       have people in other parts of the country  
3       expect them to become a waste dump. Thank  
4       you.

5                   CHAIR SCOWCROFT: Thank you very  
6       much. Our final presenter is Steve Frishman  
7       from Nevada.

8                   MR. FRISHMAN: Thank you, Mr.  
9       Chairman and members. I signed up at the  
10      very last second because after listening to  
11      the first part of this morning's panel, I  
12      thought of two points that I wanted to make  
13      sure got on the record.

14                  And sure enough, they did to a  
15      certain extent after the break, the first  
16      one being the take title on-site idea. And  
17      some of you know, and maybe all of you know,  
18      that your origin as a Commission is at least  
19      partly based on the fact that Senator Reid,  
20      for two sessions, tried to get a take title  
21      on-site bill moving, and it wouldn't move.

22                  But there were a lot of reasons

1       that had nothing to do with the merit of the  
2       bill. So I would just suggest that if you  
3       are going to be looking seriously at the  
4       Voinovich bill, you might go back and also  
5       look at Senator Reid's take-title bill.

6               And I think the incentive when  
7       the bill was first written was first to  
8       respond to the Arkansas ruling, meaning stop  
9       the bleeding or put up a firewall so we know  
10      where the end of that liability is.

11             And the other was to make sort of  
12      a rational statement, which is legitimize  
13      on-site fuel storage because that is what  
14      was happening and what was going to happen  
15      for the foreseeable future.

16             So between those two incentives,  
17      that bill emerged and was there. If you  
18      recall, Senator Reid, in his frustration  
19      about not moving that bill at first  
20      suggested a congressionally-formed Blue  
21      Ribbon Commission, and then, through  
22      discussion with the Administration, you now

1       exist the way you do.

2               I'm not saying that this should  
3       be any leverage to you, and I'm not  
4       suggesting that at all. I'm just telling you  
5       that there is proposed legislation out there  
6       that describes how it would work, at least  
7       from the standpoint of those of us who were  
8       involved in writing it.

9               And so, it's at least a model to  
10      look at and to recognize that it is there,  
11      and should not -- the Voinovich bill should  
12      not be the only one that you look at as a  
13      potential model.

14              The other -- well that was  
15      brought up by Michael Hertz and Elgie  
16      Holstein and then caused some discussion.

17              The other was a point brought up  
18      by Kevin Cook that I had been thinking about  
19      also that needed to at least get on the  
20      table after some of the things that were  
21      said yesterday and today.

22              And that's the Waste Policy Act

1 required the president to, very quickly  
2 after it was passed, make a decision about  
3 what we referred to as commingling, meaning  
4 disposal of commercial spent fuel and  
5 defense waste together, rather than in  
6 separate repositories.

7 The president made that decision,  
8 I believe, in 1984, and if I also recall  
9 correctly, it was a very thin decision. I  
10 don't recall that the decision paper was  
11 even one page long, and I think it was at  
12 that time, thought to be essentially an  
13 obvious decision to be made.

14 Well, conditions with the defense  
15 waste are very different now from what they  
16 were in 1984 in terms of obligations to  
17 remove waste from Idaho for instance, and  
18 the whole clean-up program, and the fact  
19 that we are no longer building weapons.

20 So it occurred to me that it  
21 might be worth going back and at least  
22 looking at that decision and whatever basis

1 can be found for the decision.

2 It also has some other  
3 implications, and that's that the waste fund  
4 is supposed to be paying for the commercial  
5 side, and DOE defense appropriations pays  
6 for the DOE side.

7 Well, there's a formula that was  
8 developed to say ultimately, what percentage  
9 should be assigned to what. And I have  
10 always been mystified at how they arrived at  
11 that conclusion.

12 But it also -- at least if you  
13 look at the -- conceptually, look at  
14 separating the two long enough to where you  
15 can actually get a definitive look at what  
16 are the waste fund responsibilities and what  
17 are the appropriation responsibilities.

18 It may lead you to think that  
19 maybe some of the financial issues and some  
20 of the logistical issues, could go away if  
21 the two were separated at least long enough  
22 to look at each as its own entity and then

1 bring them back together again if it seems  
2 like the right thing, or at least have a  
3 basis to keep them separate if there is new  
4 thinking that would lead to that conclusion.  
5 Thanks.

6 CHAIR SCOWCROFT: Thank you very  
7 much, Mr. Frishman. I would like to express  
8 the appreciation of the Commission to all of  
9 the presenters this morning for representing  
10 what I think is a model of responsible  
11 public comment.

12 Thank you very much, and this  
13 meeting is adjourned.

14 (Whereupon the above-entitled  
15 matter adjourned at 12:14 p.m.)  
16  
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America's Nuclear Future

Before: n/a

Date: 02-02-11

Place: Washington, DC

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